3447.

SUPREME COURT OF THE UNITED STATES,

No. 176.

THE UNITED STATES App'lts.

vs.

CRUZ CERVANTES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original.	Print.
Proceedings before Commissioners,	1	3
Petition of Claimant,	9	8
Deposition of David S. Spence,	11	9
" " Alexis Godey,	12	10
" " Juan Castanedo,	13	11
" " Francisco Pacheco,	15	13
" " W. E. P. Hartnell,	17	14
Espediente,	21	16
Map,	24	18
A. Translation of Espediente,	31	18
Document annexed to deposition of D. Spencer, marked A.	37	29
Map, between	38 & 39	29
Translation marked C.	47	35
Grant of Land marked B.	53	41
Translation of grant,	55	42
Report of Commissioners on Agriculture, marked C.	57	43
Colonization Law, marked B.	63	47
Decree of Lieutenant Governor of Mexico, marked D.	67	50

	Original.	Print.
Extracts of Journal of Junta Department, marked E.	71	52
Certificate of Surveyor General,	75	53
General regulations, marked H.	77	56
A Fragment of Espediente,	85	60
Report of U. States Surveyor General	87	62
Translation, marked F.	88	62
Motion to dismiss, &c.,	89	63
Motion for Certificate of Conformation,	89	63
Motion to certify decision of Board,	90	64
Opinion of Commissioner Thornton,	91	64
" " Hall,	143	102
Decree for final Conformation,	151	107
Order of Commissioners,	153	109
Certificate of Secretary,	155	109
Certificate of Clerk, District Court,	156	109
Proceedings in the District Court,	157	110
Notice of Appeal from Attorney General,	159	111
Petition for Review,	160	112
Answer to Petition,	166	116
Order to take further Testimony,	169	118
Testimony of Pacificas Ord,	170	118
Decree of District Court,	171	119
Appeal Granted,	172	129
Certificate, of Clerk,	173	120

Transcript of the Proceedings in Case No. 56.

CRUZ CERVANTES, Claimant,

vs.

THE UNITED STATES, Defendant.

For the place named "San Joaquin, or Rosa Morada."

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this twentieth day of February, Anno Domini One Thousand Eight Hundred and Fifty-two, before the Commissioners to ascertain and settle the Private Land Claims in the State f California, sitting as a Board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The Petition of Cruz Cervantes for the place named "San Joaquin, or Rosa Morada," was presented, and ordered to be filed and docketed with No. 56, and is as follows, to wit:

(*Vide* page 9 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN ERANCISCO, *February 27th*, 1852.

In Case No. 56, Cruz Cervantes for the place named "San Joaquin, or Rosa Morada," the deposition of David S. Spence a witness in behalf of the Claimant, taken before Commissioner Hiland Hall was filed:

(*Vide* page 11 of this Transcript.)

SAN FRANCISCO, *March 2d*, 1852.

In the same Case the deposition of Alexis Godey, a witness in behalf of the Claimant, taken before Commissioner Henry J. Thornton, was filed:

(*Vide* page 12 of this Transcript.)

SAN FRANCISCO, *March 11th*, 1852.

In the same Case the Secretary filed the translation of the original Espediente marked A. H. H. and annexed to the deposition of David S. Spence, a witness in behalf of the Claimant, taken before Commissioner Hiland Hall, and filed in office on the 27th February 1852, which translation is in the words and figures as follows, to wit:

(*Vide* page 47 of this Transcript.)

SAN FRANCISCO, *March 16th*, 1852.

In the same Case the U. S Law Agent made a motion to dismiss the case, which is in the words and figures as follows, to wit:

(*Vide* page 89 of this Transcript.)

Which motion having been overruled, the Case was set for hearing on Tuesday, 23d inst.

SAN FRANCISCO, *March 30th*, 1852.

In the same Case the deposition of Juan Castaneda, a witness in behalf of the United States, taken before Commissioner Harry J. Thornton, was filed:

(*Vide* page 13 of this Transcript.)

SAN FRANCISCO, *April 13th*, 1852.

Case No. 56, Cruz Cervantes, San Joaquin, alias Rosa Morada, set or argument for 22d inst.

SAN FRANCISCO, *April 22d*, 1852.

Case No. 56 set for hearing to-day, was continued to Thursday the 29th inst.

SAN FRANCISCO, *April 26th*, 1852.

In the same Case the deposition of Francisco Serez Pachoco, a witness in behalf of the Claimant, taken before Commissioner Harry J. Thornton was filed:

(*Vide* page 15 of this Transcript.)

SAN FRANCISCO, *April 28th*, 1852.

In the same Case the deposition of William E. P. Hartnell, a witness in behalf of the Claimant was taken before Commissioner Harry J. Thornton, was filed:

(*Vide* page 17 of this Transcript.)

SAN FRANCISCO, *April 29th*, 1852.

Case No. 56 was called; argument commenced by Mr. Strode, one of the counsel for the Claimant, followed by G. W. Cooley, U. S. Law Agent, and continued for to-morrow.

In the same Case the following witnesses having been sworn before the Board, declared as follows, to wit:

(George B. Tingly stated :)

"Supposing the distance of the Rancho to be fourteen leagues from Monterey, I think the nearest that it approaches the sea-shore is more than ten leagues, but I do not know the boundaries of the said Rancho."

(Henry W. Halleck, stated :)

"I think from measurements made in the vicinity that the Rancho is forty miles from the general line of the Coast, and at least thirty from the indentation of the Bay, but I do not know the boundaries of the said Rancho."

SAN FRANCISCO, *April 30th*, 1852.

In the same case argument by the U. S. Law Agent resumed, and continued for further argument.

SAN FRANCISCO, *May 1st*, 1852.

In the same case, argument of Mr. Strode, one of the Counsel for the Claimant resumed, and the case continued to Tuesday, May 11th.

SAN FRANCISCO, *May 11th*, 1852.

This being the day appointed for resuming the argument in Case No. 56, Cruz Cervantes, Commissioner Wilson announced from the Bench, that Commissioner Hall being prevented by sickness, and Commissioner Thornton, by the melancholy intelligence received by mail of the death of his daughter, consequently the majority of the Board not being present, all matter set for hearing for to-day, is postponed to Tuesday, May, 18th inst.

SAN FRANCISCO, *May 18th*, 1852.

Case No. 56 Cruz Cervantes continued for further argument.

SAN FRANCISCO, *May 25th*, 1852.

Case No, 56 was called and continued.

SAN FRANCISCO, *June 1st*, 1852.

Case No. 56 set for hearing on Friday next, 4th inst.

SAN FRANCISCO, *June 4th*, 1852.

Case No. 56 called; the argument for the Claimant resumed by Wm. Carey Jones, one of the Counsel, and continued for to-morrow at 11 o'clock, A. M.

SAN FRANCISCO, *June 5th*, 1852.

Case No. 56 called; the argument by the Counsel for the Claimant

resumed and concluded, and the case continued to Thursday next, 10th inst., at 11 o'clock, A. M.

SAN FRANCISCO, *June 10th*, 1852.

Case No. 56 called, and on motion of the U. S. Law Agent, continued to Tuesday next, 15th inst., at 11 o'clock, A. M.

SAN FRANCISCO, *June 15th*, 1852.

Case No. 56 called; argument by the U. S. Law Agent resumed, and case continued to to-morrow, 11 o'clock, A. M.

SAN FRANCISCO, *June 16th*, 1852.

Case No. 56 called, argument by the U. S. Law Agent resumed and concluded, and the case taken under advisement by the Board.

In the same case the U. S. Law Agent filed the colonization law of August 18th, 1824, marked exhibit D, and extracts from the Journal of the Departmental Junta, marked exhibit "E," as evidence in behalf of the United States, which exhibits are in the words and figures as follows, to wit:

(*Vide* pages 63 and 71 of this Transcript.)

In the same case the Secretary filed translations of exhibits "D and E" filed by the U. S. Law Agent this day as evidence in behalf of the U. S., which translations are as follows, to wit:

(*Vide* pages 67 and 73 of this Transcript.)

SAN FRANCISCO, *June 30th*, 1852.

In the same case the counsel for the claimant filed an authenticated copy of an original Spanish document on file in the office of the U. S. Surveyor General for California, entitled "Index to Land Titles," accompanied by a letter dated June 29th, 1852, signed Sam'l D. King, and addressed to Wm. Carey Jones, Esq., as evidence in behalf of the claimant in this case, which document and letter having been admitted by the Board, with the consent of the U. S. Law Agent, as evidence, it was ordered to be spread on the Records marked exhibits F and G, and are in the words and figures as follows, to wit:

(*Vide* pages 75 and 88 of this Transcript.)

In the same case the U. S. Law Agent, submitted to the Board, as evidence in behalf of the United States, copies of two original Spanish documents on file, in the office of the U. S. Surveyor General for California, authenticated by the said Surveyor General, which copies were filed in the case, March 22d, 1852, as exhibits A and C, with their respective translations, and are as follows, to wit:

(*Vide* pages 21 and 57 of this Transcript.)

SAN FRANCISCO, *July* 3*d*, 1852.

In the same case the United States Law Agent, in behalf of the U. S. filed and submitted as evidence an authenticated copy from the U. S. Surveyor General, of the General Regulations for the Colonization of the Territories of the Mexican Republic, dated 21st November, 1828, which marked as exhibit H, was ordered to be filed among the papers in this case, and is as follows, to wit:

(*Vide* page 77 of this Transcript.)

In the same case the Secretary filed the translation of the General Regulations marked exhibit H, above described, and is as follows, to wit:

(*Vide* page 81 of this Transcript.)

SAN FRANCISCO, *August* 3*d*, 1852.

Case No. 56 being called, Commissioner Harry J. Thornton delivered the opinion of the Board declaring the claim valid; the entering of the Decree of final confirmation being reserved for a future day.

LOS ANGELES, *Aug.* 31*st*, 1852.

In the same case the counsel for the claimant presented the following motion, to wit:

(*Vide* page 90 of this Transcript.)

The above motion was taken under advisement.

LOS ANGELES, *Sept.* 1*st*, 1852.

In the same case the motion filed on yesterday by the counsel for the claimant, was overruled and the order therein prayed for, denied.

LOS ANGELES, *Sept.* 6*th*, 1852.

In the same case the counsel for the claimant filed the following motion, to wit:

(*Vide* page 90 of this Transcript.)

Which was taken under advisement.

LOS ANGELES, *Sept.* 13*th*, 1852.

In the same case the motion of the counsel for the claimant, heretofore filed, on the 6th inst., has overruled, and the petition denied.

LOS ANGELES, *Sept.* 27*th*, 1852.

In the same case the counsel for the claimant, Mr. Jones, moved the

Board for leave to withdraw the original papers, certified copies of the same heretofore filed, with the petitions, to remain on file in the office.

Which motion was taken under advisement.

SAN FRANCISCO, *Dec.* 13*th*, 1852.

In the same case the counsel for the claimant filed the following motion, to wit:

(*Vide* page 89 of this Transcript.)

Which motion was taken under advisement.

SAN FRANCISCO, *Dec.* 14*th*, 1852.

In the same case the motion filed on yesterday, by the counsel for the claimant was overruled and the order therein prayed for, denied.

SAN FRANCISCO, *Dec.* 18*th*, 1852.

In the same case Commissioner Hiland Hall delivered his opinion in the case.

In the same case Commissioner Harry J. Thornton delivered his final opinion, and the Decree of final confirmation of this Board.

Ordered that the opinion of this Board, delivered by Commissioner Harry J. Thornton on the 3d of August, 1852, the several opinions delivered this day, and the Decree of final confirmation of this Board also delivered this day, in this case be recorded on the Journal, which are in the words and figures as follows, to wit:

(*Vide* page 91 of this Transcript.)

SAN FRANCISCO, *Aug.* 3*d*, 1854.

In the same case the U. S. Law Agent made the following motion, to wit:

(*Vide* page 155 of this Transcript.)

SAN FRANCISCO, *Aug.* 22*d*, 1854.

In the same case the motion of the U. S. Law Agent, heretofore, to wit: on the 3d inst., filed, was granted, and the following order was made, to wit:

(*Vide* page 156 of this Transcript.)

(*Petition.*)

Before the Honorable the Commission to ascertain and settle Private Land Claims in California.

Cruz Cervantes, a citizen of said State, gives notice that he claims by virtue of a grant from the Mexican Nation, a tract of land situated in the county of Santa Clara, in said State, and known by the name

of San Joaquin or Rosa Morada, with the boundaries described in the grant thereof, to wit: On one side, the Arroyo of San Felipe; On the second side, the hills or mountains of San Joaquin; On the third, the Arroyo of Santa Anna, and on the fourth, a line drawn through the plain of San Juan.

Said land was conceded to claimant by a grant issued on the 1st day of April, 1836, by Nicolas Gutenez Superea, Political Chief, ad interim, of California, and thereby authorized to grant lands in the name of and on behalf of the Mexican Nation.

On the 18th of February, 1841, judicial possession of said land was given to the claimant by Juan Miguel Anzar, Judge of first instance of that jurisdiction.

Said land has been occupied by claimant according to law, and the direction contained in said grant, and is now held by him in quiet possession.

There is no conflicting grant to said land, or any portion thereof, in the knowledge of claimant.

Said land has never been surveyed, but its boundaries are natural and well known, and may be easily traced. It is supposed to contain the quantity of two Sitios de ganado mayor, more or less.

A copy and translation of said grant, and a copy of said act of judicial possession are herewith presented, and the originals are ready to be produced and proved, as may be required.

Claimant request a speedy examination of his said claim and its recognition and confirmation.

JONES, THOMPSON & STRODE,
Attornies for Claimant.

Filed in office, Feb'y 20th, 1852.

GEO. FISHER,
Sec.

(*Deposition of David S. Spence.*)

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

SAN FRANCISCO, *Feb'y 26th*, 1852.

On this day, before Hiland Hall, one of the Commissioners for ascertaining and settling private land claims in California, came David S. Spence, a witness produced in behalf of the claimant, in the case of the petition of Cruz Cervantes, being number 56 on the Docket of said Commissioner, and after being duly sworn, testified as follows.

The Law Agent was notified and attended.

Questions by Mr. Jones, Counsel for the Claimant..

1st. What is your name, age, and place of residence?

Answer. My name is David S. Spence, I am 53 years of age, and I reside in Monterey, where I have resided for twenty-eight years past.

2d. Are you acquainted with the handwriting of Nicolas Gutierrez, Francisco del Castillo Negrate, Manuel Jimeno, Juan Miguel Anzar, and if so, look upon the Expediente of Cruz Cervantes, marked A, with the initials H. H., and say if the signatures of said persons upon said paper are genuine.

Answer. I have often seen them all write, and am acquainted with their handwriting. The signature of each of said persons I have no doubt is genuine.

3d. Did Nicholas Gutierrez ever act as Governor of California? if so, when?

Answer. He was acting as such in the year 1836, and Castillo Negrete was Secretary.

4th. Has said Anzar acted as Justice of the Peace, and when?

Answer. He was Justice of the Peace, but I cannot state the exact time. It was, I think, sometime between 1839 and 1842.

DAVID S. SPENCE.

Sworn and subscribed before me,

HILAND HALL,
Com.

Filed in office Feb'y 27th 1852.

GEO. FISHER,
Sec'y.

(*Deposition of Alexis Godey.*)

CALIFORNIA LAND COMMISSION.

SAN FRANCISCO, *March 2d*, 1852.

At Chambers.

Before me, Harry J. Thornton, one of the Board of Commissioners to ascertain and settle private Land Claims in the State of California, came Alexes Godey, a witness summoned to testify in behalf of the claimant, Cruz Cervantes, whose petition is No. 56 on the Docket. The Law Agent of the United States being present, and the said witness being by me first duly sworn, testified as follows, to wit:

Ques. by the Claimant.

Ques. 1. What is your name, age and residence?

Answer. My name is Alexis Godey, I am thirty-three years of age and reside in the county of Santa Clara.

Ques. 2. Do you know any Rancho in California called San Joaquin? if so, state where it is, whether it is occupied; and if so, whom by, and when you first knew it.

Ans. I know the Rancho called San Joaquin, near that of Francisco Pacheco, south of Pacheco's Pass, in the county of Monterey. I know it to be occupied by Cruz Cervantes, and have known the Rancho since 1846.

Ques. 3. Was it occupied when you first knew it?

Ans. It was occupied. He had cattle, horses, sheep, and a house

on it, and cultivated the land, and his family lived on the Rancho. The house looked to be several years old. They had Corrals on it. I have been there several times, and saw it always occupied.

Cross-Examination by Geo. W. Cooley, Esq., Law Agent.

Ques. 1st. What quantity of cattle, horses and sheep had he on the Rancho?

Ans. It was estimated to be five hundred head of cattle, about forty horses, and about one hundred sheep.

Question 2d. To what extent did the cattle, horses, and sheep range over the Rancho of San Joaquin.

Answer. I have seen the stock around about the house and mixed with that of his neighbors all over the Rancho.

Question 3d. To what extent was the land cultivated?

Answer. I have seen four or five acres in cultivation at a time in one enclosure.

ALEXIS GODEY.

Sworn to and subscribed before me this 2d. of March, 1852.

HARRY J. THORNTON.
Com.

Filed in Office, March 2d. 1852.

GEO. FISHER,
Sec'y.

(*Deposition of Juan Castanedo.*)

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS

SAN FRANCISCO, *March 30th*, 1852.

On this day, before me, Harry J. Thornton, one of the Commissioners for ascertaining and settling Private Land Claims in the State of California, came Juan Castanedo, a witness produced in behalf of the United States, claimant being Cruz Cervantes, No. 56 on the Docket of the Commissioners; being duly sworn, testifies as follows, his evidence being given in the Spanish Language, and interpreted by the Secretary, George Fisher.

(*Question by the Law Agent of the United States.*)

Question 1st. What is your name, age, and place of residence?

Answer. My name is Juan Castanedo, my age about forty-five years, and my present residence Sonoma.

Question 2d. What official station have you held under the Mexican Government in California.

Answer. I came to California in 1838 as Captain of Cavalry in the Mexican Army, and then was appointed Secretary to the Commander-in-Chief of the Military forces in California, the Commander-in-Chief was Mariano G. Vallejo, I was his Secretary upwards of a year.

Qnestion 3d. What was the usage and custom in California in obtaining the approval of the Territorial Deputation or Departmental

Assembly to grants or concessions of land made by the Governor. By whom was it usually obtained?

Answer. There was no Law regulating the subject. The grantees, or parties interested, presented their Title papers to the Secretary of the Assembly, who gave an account of the same to the Assembly for their actions.

(*Cross Examination by the Attorney for Claimant.*)

Cross Question 1st. Do you make a distinction between "titles" and "concessions?"

Answer. There was never made any difference between "titles" and "concessions." The Tutilos were considered as security for the favours granted, and to secure the property.

Cross Question 2d. To whom was what you call "Titulo" delivered after the making of it?

Answer. To the party interested soliciting the land.

Question 3d. Were you ever a member of the Territorial Deputation of California?

Answer. I never was a member.

Question 4th. Were you ever Secretary of the Assembly?

Answer. I never was.

Question 5th. After you ceased to be Secretary to the Commander-in-Chief, what was your occupation after that?

Answer. I continued in my grade as Captain of Cavalry in the Mexican Army. Whilst I was Secretary of the Commander-in-Chief, I went to Mexico on business of the Commander-in-Chief, in the latter part of 1839, or beginning of 1840, and returned with Gen, Micheltorena in 1842.

Question 6th. How often, and when, did Departmental Assembly sit during the time that Micheltorena was here as Governor?

Answer. I do not know; I landed with Gen. Micheltorena at San Diego, from thence we proceeded to Los Angeles, from thence I was detailed to the northern frontier at Sonoma, where I remained most of the time; I was once at Monterey in 1843 when the Assembly was in session, but I was never present in the Hall of Assembly.

Question 7th. When what you call the "Titulo" was delivered to the interested party, what was done with the conception?

Answer. I do not know.

Question 8th. Where was Gen. Vallejo statement at the time you were his Secretary?

Answer. In Sonoma.

J. DE CASTANEDO.

Sworn to and subscribed before me this 30th March, 1852.

HARRY J. THORNTON.
Com.

Filed in Office, March 30th, 1852.

GEO. FISHER.
Sec'y

(*Deposition of F. P. Pacheco.*)

OFFICE OF THE COMMISSIONERS OF PRIVATE LAND CLAIMS IN CALIFORNIA.

SAN FRANCISCO, *April 26th*, 1852.

On this day before me, Harry J. Thornton, one of the Commissioners for ascertaining and settling Private land Claims in California, came Francisco Perez Pacheco, a witness produced on behalf of the claimant, Cruz Cervantes, whose petition is No. 56 on the Docket of said Commissioners. The witness being duly sworn testified as follows: The Law Agent was duly notified and attended by Mr. Greehow.

Questions by the Claimant.

Ques. 1. What is your name, age, nativity, and place of residence?

Ans. My name is Francisco Perez Pacheco, 59 years of age; my birth place Gaudalajara; my residence in Monterey, in California.

Ques. 2. How long have you resided in California, and what place have you resided at since you came?

Ans. I resided in California thirty-two years, almost exclusively at Monterey, except the time I resided at my Rancho San Felipe de Gaudalajara, in the county of Monterey.

Ques. 3. Do you know Cruz Cervantes the claimant in this case, if so, where does he reside?

Ans. I know him. He lives on his Rancho called San Joaquin in the county of Monterey.

Ques. 4. State how long has he resided on that Rancho?

Ans. I do not exactly recollect the time, but I believe it was about two years after the revolution of Governors Chico and Gutienez when he commenced residing on it.

Ques. 5. State whether he has stock upon said Rancho, and whether he has cultivated or otherwise improved it.

Ans. He has occupied it with stock and built some small houses upon it, and made enclosures and cultivated the ground, and still occupies it thus.

Ques. 6. Were you present when judicial possession was given to Cervantes of his Rancho, if so, state by whom it was given?

Ans. I was present, and it was given by Juan Miguel Anzar, acting in the capacity of Justice of the Peace of the mision of San Juan Bantista.

Ques. 7. Examine the paper marked A. attached to the deposition of David Spence, given in this case, and say whether your signatures where they appear upon that paper are genuine, and whether they were made at the time they purport?

Ans. I have examined the paper described in the foregoing *in the foregoing* interrogatory, and find six signatures on various pages in

my own hand writing, which I recognize as genuine signatures, signed at the time stated in the said document.

Ques. 8. State whether you saw Anzar Manuel Castanares present at the giving of the judicial possession you have spoken of, and if you recollect whether they signed the paper above referred to, on the same occasions with you.

Ans. I have seen Anzar, and Manuel Castanares present at the giving of the judicial possession of the said Rancho to Cruz Cervantes, but I do not recollect of their having signed the said Document at that time with me, but I do recognize the signatures of Anzar on the said Document as his genuine signatures, also the signatures of Jose Manuel Bargas as genuine.

Ques. 9. State if you know where Anzar Castanares and Bargas now are?

Ans. Anzar is still living at the town of San Jose, in the county of Santa Clara in a very feeble state of health. Castanares is in Mexico, and Bargas is dead.

Ques. 10. How many leagues is the Rancho de San Joaquin, of which you have been testifying, from Monterey.

Ans. I believe it is fourteen or fifteen leagues from Monterey.

Ques. 11. Did you know Jose Joaquin Gomez, Jose Maria Muldonado, Jose Antonio de la Guerra y Carrillo, and if so, do you know where they now are?

Ans. I did know them all. Gomez is dead, Muldonado is also dead, and Carrillo is living at Santa Barbara.

(*Cross Interrogatories propounded by Law Agent.*)

Ques. 1. At the time when possession was given to Cervantes of this Rancho, was any doubt expressed as to the goodness of his title?

Ans. I do not know of any doubt having been expressed on the subject.

Ques. 2. Did you always understand that his title was perfect?

Ans. I did.

FRAN'CO PEREZ PACHECO.

Sworn to and subscribed before me, the Law Agent having testified &c., this 26th April, 1852. HARRY J. THORNTON,
Com'r, &c.

Filed in office Aug. 26th, 1852.

GEO. FISHER,
Sec'y.

(*Deposition of Wm. E. P. Hartnell.*)

OFFICE OF BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

SAN FRANCISCO, *April 28th*, 1852.

On this day, before me Harry J. Thornton, one of the Commissioners for ascertaining and settling private Land Claims in the State

of California, came Wm. E. P. Hartnell, a witness produced in behalf of the claimants, Cruz Cervantes, whose petition is No. 56, on the docket of the Board and after being duly sworn, testifies as follows.

The Law Agent was notified and attended by Mr. Greenhow.

Questions by Claimant's Counsel.

Ques. 1. What is your name, age, and place of residence, how long you have resided in California, and what public offices you have filled?

Ans. My name is Wm. E. P. Hartnell, age 56 years, my place of residence is the county of Monterey, I have resided in California thirty years. I have filled the office of Inspector General of the Missions. Collector of the Port of Monterey. Translator to the Military Government of California, and at preseat, State Translator.

Ques. 2d. Are you well acquainted with the customs and usages in California, under the Mexican Government, in relation to Grants of Land?

Ans. I am very well acquainted with them.

Ques. 3d. After a grant was made by the Political Chief or Giver, was the recipient of the part according to those usages and customs, entitled to go into possession of the land and to use it and occupy it as its owner, or did he have to wait for possession until after confirmation by the Deputation or the Assembly?

Ans. He was most certainly entitled to enter into possession immediately after receiving the Governor's title, and so far from having to wait for judicial possession, or the approval of the Deputation or Departmental Assembly; I have known numerous instances in which neither one or the other were asked for for many years.

Ques. 4th. According to those usages and customs to whom did it belong to bring the concessions of land before the bodies you have mentioned for approval?

Ans. It was always considered to be the duty ef the Governor to do that, and I know from my own knowledge, that whilst the Deputation was held in Monterey, the Governors always did so. I never knew of any partee interesting himself about getting the approval of his title, until it was announced that the Americans were coming to take possession of the country. But then I knew that by the advice of American citizens residing in California, many title holders in the neighbourhood of Monterey, sent to Los Angeles to get their title approved by the Assembly. This rumour of the Americans coming, was in 1845.

Ques. 5. According to those usages and customs, were the possession which were taken under the grants of the Governor, respected and considered lawful by the public and by the authorities of the country?

Ans. They were to the best of my recollection, always so considered and respected.

Ques. 6th. Do you know whether there was a civil revolution in California in the latter part of 1836, by which the existing Government was deposed, and an independent and Revolutionary Government attempted to be established?

Ans. Such a state of things did take place somewhere about the time mentioned in the question.

Ques. 7th. For what number of years, immediately before the conquest or acquisition of Alta California by the Americans, did the customs and usages you have spoken of prevail.

Ans. These customs prevailed as much as eleven or twelve years before the acquisition of the country by the Americans.

(*Questions by the United States Law Agent.*)

Ques. 1st. Did you consider it to be the duty of the Political Chief or Governor, only to present the titles to the Deputation or Junta or Assembly.

Ans. I have always so considered it and believe it to have been the general opinion of the inhabitants of this country.

Ques. 2d. Do you believe, and was it generally believed that the Governor or Political chief was bound in duty, to present every title which has been granted to the Deputation, Junta, or Assembly for confirmation?

Answer. I believe, and it was generally believed, that the Governor, or the Government Secretary under his direction, was in duty bound to have every title presented to the Deputation Junta or Assembly for approval.

Question 3d. Do you believe, and was it generally believed, that the Governor or Political Chief was obliged so to present a title which he might regard as having been improperly granted, or as being injurious to the Country?

Answer. As far as regards myself, I believe that it was the duty of the Governor to forward every title granted to the Deputation or Assembly for its approval or disapproval.

W. E. P. HARTNELL.
The Law Agent, present.

Sworn to and subscribed before me this 28th of April, 1852
HARRY J. THORNTON.
Com'r. &c.

Filed in office, April 28th, 1852.
GEO. FISHER.
Clerk.

1. S. D. K.]
JURISDICCION DE MONTEREY. } Año de 1835.

(*Espediente.*)

Sobre el Parage Nombrada San Joaquin Solicitado por Du. Cruz Cervantes, 156.

2 S. D. K.] Selli tercero Dos Reales; Habilitado provicionalmente por la administracion de la Aduana Maritima de Monterey de la Alta California, para los Años de Mil Ocho Cientos treinta y Cuatro y Mil Ocho Cientos treinta y Cinco.

FIGUEROA. A. RAMIREZ.

A

(*Expediente*)

MONTEREY S'bre. 22 de 1835. Sòr Gefe Politico.

[3 S. D. K.] De conformidad con las leyes de la materia informe el Ayuntamiento de esta Capital si el interesado en esta instancia abtenido los requisitos prevenidos pa ser atendidas en esta Solicitud si el terreno qe pretende esta comprendido en las veinte leguas limitrofes o dicstitorales qe espresa la ley de 18 de Agosto de 1824, si es derezadio, corporal ò atravedero si pertenece a la propriedad de alguna mision. Corporacion ò pueblo con todo lo demas qe crea conducente à ilustrarla materia evacuados estas diligencias pasara este espediente al S Mayordomo de San Juan B para qe se ponga lo qe le ocurra en el particular El S'r Du. Jose Castro primer vocal de la E Diputacion Territorial y Gefe S Politico California asi le mando decreto y firmo de qe doy feè.

JOSE CASTRO.

Fa. del Castillo Negrete.

Scrio.

El cuido Cruz Cervantez avecindado in este Territorio, con el debido respeto hazo à V-S presente que hallan dome con el numero de dos cientas Cabesas de Ganado bacuno de mi propiedad, y decidido à fomentar el gru de su crix, como el mas productino en este suelo, carezce de un sitio proprio, en que poder poner en ejecucion mi empresa. En tal concepto y seguro de estas desocupado y sin destino por consigeuente valdio el parage Nombrado S Joaquin situado entre Santa Anna que queda al Sur S Felipe al Norte, el llano de S Juan, al poniente y al Oriente las lomas pertenecientes al mismo sitio siendo este de das leguas de largo y una de ancho espero se sirva V tenerme por presentado y concederme la posecion de mencionado sitio protestando formar el diseño correspondiente y presentarlo con su correspondiente descripcion à este Sobierno para que previo los tramites de estilo se me adjudigue y de posecion del repetido sitio. Por tanto A. V. Suplico se sirva mandar como llevi pedido en le que recibire gracia. Monterey, 10 de 1835, A. Ruego del interesado por no saber firmar.

JOSE PABLO DIAS.

Interim de la Alta.

[4. S .D. K.] Sello tercero, Dos Reales; Habilatido provicionálmente por la administracion De la Aduana Maritima de Monterey De la Alta California para los Años de Mil Ocho Cientos treinta y Cuatir y Mil Ocho Cientos treinta y Cinco.

FIGUEROA. A. RAMIREZ.

Sör Gefe Sup'r Politico.

El Cindadans Cruz Cervantes con el devido respeto hago a V. S. presente que habiendo afrecido en mi anterier escrito el presentar diseño del Sitio de San Joaquin que en el tenga pedido, como lo previenesirlas leyes de la materia, la verifico ahora acompañando al presente el indicado diseño para que teniendome V. S. por presentada en toda forma y habiendo cumplido con los requisitos prevenidos en todas sus partes se degne acordar despues de concedido el terreno que solicito se me de la correspondiente posecion de el can todas las formalidades legales prevenidas para el caso, siendo la demarcacion pa. indicar los limites del citado terreno, tocando una linea recta de Norte á Sur de legua y media de largo desde el Arryo Sin azua q'e estya frente del de S. Felipe, hasta pasar una cimequita que esta en direccion de las Lomas de Santa Anna y una legua de poniente á Oriente desde la [5. S. D. K.] liñea q'e señala el llano de San Juan hastn las lomas altns de San Joaquin sirviendo de limite entre el terreno q'e pido y el Rancho de San Felipe el mismo Arrogo sin agua, En cuyos terminos–A. V. S. suplico se digne mandar como llevo pedido por ser asi de justicia en lo que tambien recibine gracia.

Monterey 20 de Septiembre de 1835.

A Ruego de Cruz Cervantes hisolo.

MAN'L M. GONZALES.

Setiembre 3 de 1839.

Ea Session de este dia paso a la comsion de terrenos Valdios,

DAV. E. SPENCE.

JOSE MARIA MALDONADO.

Scrio.

[6. S. D. K.]

(For Map, sce original page 24.)

[7. S. D. K.] Sello tercero Das Reales, Habilitado provicionalmente por la administracionde la Adnana Maritima de Monterey de la Alta California para las Años de Mil Ocho cientos treinta y cuatro y Mil Ocho cientos treinta y cinco.

FIGUEROA. A. RAMIREY.

(*T. Ayuntamiento.*)

La comision de terrenos valdios, ha visto la solicitud que haco el C. Cruz Cervantes para que se la conceda la parage Nombrado S. Joaquin cuyo expediente paso á informe á esta corporacion y en cumplimento al supor; decreto de 22 del pp'do informa q'e el interesado

obtiene los requisitos prevenidos para ser atendido en su solicitud q'e el terreno q'e pretende no esta comprendido en las viente leguas limitoophes y si en las litorales q'e ospresa la ley de 18 de Ag'to de 1824; que es de temporal y atrevadero y q'e si salve pretence à la mision de Juan B'ta Por lo espuesto presenta a la deliveracion de este T. Ayuntamiento la siguiente proposicion.

Puede concederee al C. Cruz Cervantes el parage Nombra S. Joaquin si no hay obias por la Mision de S. Juan Bantista á quien pertence.

Monterey, Octobre 5 de 1839.

JOSE JOAQUIN GOMEZ. MIZUEL AVILA.

MONTEREY, *Oct.* 10 *de* 1839.

[8. S. D. K.] En secion de este dia aprovò el Y Ayuntimiento de esta Capital el antecedt'e dictamen y se acordò pasè el espedt'e al Mayordomo de S. Juan Bantista en complimente; del Sp'r decreto q'e antecede.

DAV. E. SPENCE.
JOSE MÀRIA MALDONADO.
Scrio.

PUEBLE DES JUAN BANTISTA, *Othe* 13, 1835.

Puede adjudicarsele el sitio q'e pretende el interesado del parage de San Joaquin á las lomas sin tocar al Roblar q'e es donde agosto el Ganado de esta Mision.

JOSE TIBUCIO CASTRO.

MONTEREY, *Db'ne* 4 *de* 1839.

[9. S D. K.] Fase al Alcalde de esto Capital tante sello tercero Dos Reales; Habilitado provicionalmente por la administracion de la Aduana Maritimi de Monterey de la Alta California, para los Años de Mil Ocho cientos treinta y custro y Mil Ocho cientos treintn y cinco.

CASTRO. ANGEL RAMIREZ.

Quien la parte de Cruz Cervantes producera una informacion de tres testigos idoneos q'e seran interrogados sobre los puntos sigiuentes 1o. si hl interesado es C'no Mejicano por Nacimiento, si es casado y tiene hijos y si es de luena conducto. 2o. Si el terreno q'e pretende pertenece a la propriedad de alguno particular corporacion ó Pueblo si es de regadio, temporal ó abrevidersi q'e estension tendra. 30. Si tiene bienes de campo con el poblarlo ó posibilidad de adquirirlos. Ebousadas estac diligencias vuelva el espediente pa. su resolucion. El Sor D. Jose Castro vocal de la Exma Diputacion Territorial é Gefe Politica interim de la Alta California asi lo mandò decreto y firmo. Doy fee,

JOSE CASTRO.
Te'co del CASTILLO NEGRETE.
Scrio.

Derecho. $4.

MONTEREY, *Enero* 14 *de* 1836.

[10. S. D. K.] Notifiquese al interesado en este presente los testigos que se han de examinar sobre los puntos à q'e se contran al superior decreto q'e antecedè necivase la informacion q'e se pide y concluida devuelvase el expediente al S'r Gefe Sup'r Politico para los efectos q'e haya lugar. Asi yo Cuid'no Jose Ramon Estrada Alcalda Constitucional en la demarcacion de esse Y Ayuntamiente lo decreti Mandó y firmè con los de asistencia.

JOSE R. ESTRADE,
Do Assa JOSE AUTNNIO ROMERO,
JOSE MARIA MALDONADO,
Serio.

Ea la fha presente Cruz Cervantes, se le notifico el anto que, antecede y entendido digò lo Oye y que presenta por testigos á los cuidadonos. Francisco Facheco, Jose Maria Herrera, y Francisco Javier Castillo, y no firmo por no saber lo hise yo y los de ass.

M. ESTRADA.
De Assa JOSE MARIA MADONADO.
De Assa JOSE ANTONIO ROMERO.

[11. S. D. K.] Sello tercero Dos Reales; Habilitande provicionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California.

CASTRO. AUZEL RAMIREZ.

En el Puerto de Montery à los Catorce dias del mes de Enero de mil Ocho Cientos treinta y seis, presente el C. Franc Pacheco le recivirnos el Alcade juramento que hize en firma de derecho vago el cual afrecio decir verdad en le que supiere y fuere preguntado y siendolo por su nombrad edad estado patria y religion. Dijo: llamarse como queda dicho: que es casado, de caurenta y cuatro años natural de la capital de Salisco y C. A. R. Preguntada. Por el tenor del interrogativo qe contiene el superior decreto de 4 de Dieu del año ppo—Dijo —a lo 1o Que el solicitantes es cindo mejicano por naçimiento: que es Casado y tiene hijos y es de buena conducta y responde a lo 2o Que no pertenece á niuzuna particular el terreno que solicita, ni a Puebla, ni Mission que es de temporal y abrevadero, y que su estencion puede ser de un poco que mas de una y media legua y contesta. A lo 3a. Que si tiene bienes de campo que lo dicho es la verdad à cargo del juramente que tiene hecho en el que se afirmo y ratifico leida que le fue esta su declaracion la firmo conmigo y los de Assa.

JOSE R. ESTRADA.

(*Lo Testadano Va.*)
FRANCO PEREZ PACHECO de Assa.
JOSE ANTONIO ROMERO de Assa.
JOSE MARIA MALDONADO,
Scrio.

[12. S. D. K.] En la misma fecha presente el C. Jose Maria Herrera se le recibio juramente que hijo en forma de derecho el cual afrecio decir verdad en lo que supiere y fuere preguntado; y siendalo por su nombre. Edad. Estado. Patria y religion. Dija: llamarse como dicho, que es casado, de cuarenta años, natural de Guanajante y C. A. R. Preztdo por el mismo estilo que lo fue el primer testizo. Dijo— a lo 1o. Que si es cuidadano Mejicano por nacimiento: que es casado tiene hijos y es de buena conducta: y responde a lo 2o. Que entiende que no pertenece a ninzun particular mission, ni pubelo el terreno que solicita: que es de temporal y atrevedero.

[13. S. D. K.] Sello tercero Dos Reales; Habilitande provicionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ocho cientas trienta y cantro y mil ocho cientos trienta y cineo.

CASTRO. AUZEL RAMIREZ.

Y su estencion es de legua y media, y contesta a lo 3o. Que save tiene ganado para poblarlo y bastantes caballos; que lo dicho es la verdad á cargo de su juramento que tiene hecho en el que se a firmo y ratifico leida que le fue su declaracion y la firmo conmigo y los de y Assa.

JOSE R. ESTRADA. JOSE MARIA HERRERA.
JOSE MARIA MALDONADO de Assa.
JOSE ANTONIO ROMERO de Assa.

[14. S. D. K.] En la misma fecha presente el C. Franco Javier del Castillo se le recivio juramento en forma de derecho por el cual afrecio decir verdad en lo que supiere y fuere preguntado y siendalo por su nombre, etado edad, patria y religion: Dijo: Se llama como queda referido; que es soltero de trienta y dos años su patria la Capital de Mexico y Catalico A. R. Pregtelo. Por el orden que la fueron las dos anticedentes testigas dijo:

A lo 1o. Que es Mejicano por nacimiento: que es casado, tiene hijos y es de buena conducta y responde. A lo 2o. Que no pertenece á niugun particular mision ni pueblo el terreno que solicita: que es de temporal, y su estencion poco menos de dos leguas, y contesta. A lo 3o. Que tiene las das circumstancias del tenor de la pregunta: que lo dicho es la verdad á cargo del juramente que tiene hecho en el que se afirmo y ratifica, leida que le fue esta declaracion y la firmo conmigo y las de Assa.

JOSE R. ESTRADA.
[R.] FRANCISCO DEL CASTILLO NEGRETE.
JOSE MARIA MALDONADO de Assa.
JOSE ANTONIO ROMERO de Ass.

[15. S. D. K.] En la fha concluida la informacion. Sello Tercero Dos Reales; Habilitande provisionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ocho cientos treinta y cuatro y mil ocho cientos trienta y cinco.

CASTRO. AUZEL RAMIREZ.

Que se pide en el antecedente superior decreto se devuelve el espediente Original al Sor Gefe superior Politico en cumplimiento de la mandado en auto de esta fha. Y para constancia la pusi por notra qe rubrico.

[M.] ESTRADO.

MONTEREY, *Abril* 1o, *de* 1836.

[16 S. D. K.] Vista la peticion con que da principio este espediente el informe de la autoridad municipal todo lo demas que se tubo presente y ver commo de conformidad con las leyes y reglamentos de la materia se declara dueño en propriedad del terreno conicido con el nombre de San Joaquin al C'uo Cruz Cervantos à Reserva de la aprovacion de la Exma Diputacion—El Sor D'n Nicolas Gutierrez Jen'te Coronel Comand't Gñal é Inspector y Gefe Politico interino asi lo mando decreto y firmo de qe day feé.

NICOLAS GUTIERREZ,
FA del CASTILLO NEGRETE,
Scrio.

En 31 de Mayo paso á la Comision de terrenos.

MALDONADO,
Scrio.
EXMA,
S'r.

[17 S. D. K.] La Comision de terrenos Valdios impuesto del Expediente que se mando practicar á peticion del Cind'o Cruz Cervantes del parage nombrado S'n Joaquin y no lacontrando en el objeccion alguno que hacen siendo en todo conforme al Art'so 5o del reglamientos de 21 de Novbre de 1828, y a lo ley de 18 de Agosto de 1824 ofrece a la deliberacion de V. E. la Siguiente proposicion.

Se Aprueba la Consecion hecha al Cuid'o Cruz Cervantez del Parage nombrado San Joaquin en 1o de Abril del presente año.

Monterey, 6 de Julio de 1836.

JOSE JOAQUIN GOMEZ,
JOSE A. de la CARRILLO,

En 12 de Julio, volvio a la Comision p'a sureforma.

MALDONADO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under

my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the seventeen preceding and hereunto annexed pages of tracing paper numbered from one to seventeen, inclusive and each of which is verified by my initials, (S. D. K.) exhibit true and accurate copies of certain documents on file and forming part of the said Archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this 15th day of March, 1852.

SAM'L D. KING,
Surv'y Gen'l Cal.

Filed in office March 22d, 1852.

GEO. FISHER,
Sect'y.

Jurisdiction of Monterey, Year 1835.

Proceedings relative to the place called "San Joaquin," solicited by Don Cruz Cervantes.

A. Translation of 156.

To His Hon. the Political Chief:

Citizen Cruz Cervantes, a resident of this Territory, with due respect to your honor represents that owning two hundred head of neat cattle, and being anxious to dedicate myself to the rearing the same as the most productive branch of business on this soil, I am in want of a suitable place to carry my undertaking into effect. For this purpose I would request that in compliance with my petition you may be pleased to grant me the possession of the place called San Joaquin, assured as I am that said place is unoccupied with object, and consequently vacant (valdio). Said land being bounded by Santa Ana, which is on the south, San Felipe on the north, the plain of San Juan on the west, and by the hills of the said place on the east, and if of two leagues in length by one in width, the proper plat of which I shall make and present it with the corresponding description to this Government, in order that with all the usual forms, the possession of the aforesaid place may be adjudicated to me. Wherefore I request that your Honor be pleased to order it as I have petitioned, and for which I shall receive favor.

Monterey, Sept. 11th, 1835.

At the request of the interested party, who knows not how to sign, I hereby affix my name. JOSE PABLO DEIES.

(Marginal Decree.)

Monterey, Sept. 22d, 1835.

In conformity with the laws on the subject let the Ayuntamiento of this Capitol, report whether the interested party in this instance pos-

sesses the requisite qualifications to be considered in his petition, whether the land he claims is within the 20 border or 10 lettoral leagues mentioned in the Law of August 18th, 1824. Whether the land is irrigated, temporal or containing watering places. Whether it belongs to any Mission, Corporation or Pueblo (settlement) with every thing else that may serve to elucidate the matter after which shall have been accomplished let this Espedicnte be transmitted to the Majordomo of San Juan Bantista, that he may statc whatever he may deem relavent in this particular.

Senor Don Jose Castro, Senor member of the excellent Territorial Deputation and Political Chief *ad interum* thus did command, decree, and sign, all which I attest.

JOSE CASTRO.
Fe del CASTILLE NEGRETE,
Sec'y.

To the Honorable Superior Chief.

Citizen Cruz Cervantes with due respect to your Honor, represents, that having offered in my last petition to present a map of the Place called San Joaquin agreeable to the Laws upon the subject, I do so now in this accompanying map. So that in your acceptance of the same in all due form of Law, (I having complied with every requirement,) you may direct that after the concession of the land I solicited, possession of the same may be given me with all such legal forms as the case may require. The demarcation of the limits of said place is a right line of one league and a half in length, drawn from north to south from the dry Creek opposite that of San Felipe until it passes a little marsh in the direction of the hills of Santa Ana, and one league from east to west, from the plain of San Juan as far as the high hills of San Joaquin, the said Dry Creek separating the land I ask from the Rancho of San Felipe: Under such view I request your Honor to order as as I have petitioned, which being agreeably to justice, I shall also receive as a favor.

Monterey, Sept. 20th, 1835.

At the request of Cruz Cervantes, I hereby sign the same for him
MANUEL MA. GONZALES.

Sept. 3d, 1839, in session of this day's date it was referred to the Committee on Public Lands.

DAVID S. SPENCE.
JOSE MARIA MALDONADO,
Sec'y.

To the Illustrious Ayuntamento.

The Committee on public lands have seen the petition presented by citizen Cruz Cerrantes for the place called "San Joaquin," the proceedings on which were referred to this corporation, and in compliance

with the superior decree of the 22d last past, they report, that the interested party possess the requisites to be heard in his petition. The land he asks for is not within the 20 border leagues, but it is within the 10 litoral leagues mentioned in the Law of August 18th, 1824. The same land is temporal and contains watering places, and is known to belong to the mission of San Juan Bantista. For the reasons above expressed they present to the deliberation of this Illustrious Ayuntamiento the following proposition.

The place called San Joaquin may be granted to Citizen Cruz Cervantes, if the mission of San Juan Bantista to whom it belongs has no objection.

Monterey, Oct. 5th, 1839.

For JOAQUIN GORZNEZ.

MEGUEL AVILA.

MONTERY, *Oct.* 10*th*, 1839.

In their session of to-day, the Illustrious Ayuntamiento of this Capitol approved the preceding opinion and they agreed to refer the Expediente to the Mayordomo (Steward) of San Juan Bantista, in compliance with the preceding decree.

DAVID S. SPENCE.
JOSE MARIA MALDONADO,
Sec'y.

PUEBLO OF SAN JUAN BANTISTA, *Oct* 13*th*, 1835 [9 ?].

The place of San Joaquin petitioned for by the interested party, may be adjudicated to him as far as the hills without touching the oak grove which is the summer pasture for the cattle belonging to the Mission.

JOSE FEBRUCIO CASTRO.

MONTEREY, *Dec.* 4*th*, 1839 [9 ?].

Let the same be referred to the Alcalde of this capital, before whom on the part of Cruz Cervantes shall be produced an information of three proper witnesses, who shall be interrogated on the following points—

1st. Whether ths petitioner is by birth a Mexican citizen, whether he is married and has children, and whether his conduct is good.

2d. Whether the land he petitions for is the property of any private individual, corporation, or Pueblo, whether the land is irrigable, temporal or containing watering places, and what is its extent.

3d. Whether he owns any stock to put thereon, or has the means of getting it. After accomplishing which requirements let the proceedings be returned for a resolution thereon.

Senor Don Jose Castro, Senor Member of the Excellent Territorial Deputation, and Political Chief ad interim of Upper California thus did command, decree and sign.

JOSE CASTRO.
F. DEL CASTELLO NEGRETE,
Sec'y.

(*Fees* $4 00.)

Let the interested party be notified that the witnesses will be examined and the three points specified in the Superior Decree. Let the information asked be accepted, after which the proceedings shall be returned to the Superior Political Chief for such purposes as may be deemed proper. Thus did I Jose Ramon Estrada, Constitutional Alcalde of the District of this Illustrious Ayuntamiento, decree, command and sign, together with my assistants.

JOSE R. ESTRADA.
Ass't JOSE MARIA MALDONADO.
Ass't JOSE ANTONIO ROMERO.

On the same day, Cruz Cervantes being present was notified of the preceding decree, which being heard, he said he understood it, and that he presented as witnesses Citizens Francisco, Pacheco, Jose Ma. Herrera, and Francisco Javier Castello not signing because he knows not how, I did so together with my assistants.

ESTRADA.
Ass't JOSE MARIA MALDONADO.
Ass't JOSE ANTONIO ROMERO.

At the port of Monterey on the 14th day of January, 1836, Citizen Francisco Pacheco, being present, I the Alcalde administered the oath in all due form of law under which he offered to state the truth to the best of his belief and upon the points he might be interrogated. Having been interrogated as to his name, age, condition, country and religion, he said that his name was as has been stated, that he is married, is fourty-four years old, is a native of the Capital of Talisco and an Apostolic Roman Catholic. Being asked after the tenor of the Interrogatory contained in the Superior Decree of Dec. 5th of the year last past, he said—

1st. That he the petitioner is a Mexican Citizen by birth, that he is married and has children, and is of a good conduct.

2d. That the land solicited belongs to no private individual, Pueblo or Mission, that it is temporal and contains watering places, and in extent it may be a little more than one leaugue and a half.

3d. That he is the owner of stock. That the aforegoing is the truth under the oath he has taken, which he affirmed and ratified after

this his declaration had been read to him, signing the same together with myself and my assistants.

JOSE R. ESTRADA.
FRANC. PEREZ PACHECO.
Ass't JOSE MARIA MALDONADO.
Ass't JOSE ANTONIO ROMERO.

On the same day Citizen Jose Maria Herrera being present, the oath was administered to him in due form of law, under which he offered to state the truth to the best of his belief, in whatever he might be interrogated, and having been asked as to his name, condition, age, country and religion, he said his name was as has been stated, that he is married, is forty years old, is a native of Guanajuato, and is an Apostolical Roman Catholic. Being interrogated after the same manner as the first witness, he said—

1st. That the petitioner is a Mexican by birth, is married and has children, and is of good conduct.

2d. That he understands the land solicited does not belong to any private individual, mission, or Pueblo (settlement); that the same is temporal and contains watering places, its extent being of one league and a half.

3d. That he knows petitioner has cattle to put thereon, and considerable number of horses. That what he has stated is the truth under the oath he has taken, which he affirmed and ratified after his deposition had been read to him, signing the same together with myself and my assistants.

JOSE R. ESTRADA.
JOSE M. HERRERA.
Ass't JOSE MARIA MALDONADO.
Ass't JOSE ANTONIO ROMERO.

On the same day Citizen Francisco Javier del Castello being present, the oath was administered to him in due form of Law, under which he offered to state the truth to the best of his belief and in what ever he might be interrogated; and having been asked as to his name, condition, country and religion, he said that his name was as has been stated, is single and of the age of thirty-two years, his country the Capital of Mexico, and his religion Apostolic Roman Catholic. Being interrogated in the same order as the two preceding witnesses, he said:

1st. That the petitioner is a Mexican by birth, that he is married, has children, and is of a good conduct.

2d. That the land petitioned for belongs to no private individual, mission or Pueblo, that it is temporal, and its extent is of a little less than two leagues.

3d. That he has the requisites mentioned in the question. That what

he has stated is the truth under the oath he has taken, which he affirmed and ratified after his deposition had been read to him, signing the same together with me and my assistants.

FRANCISCO CASTELLO NEGRETE.
JOSE R. ESTRADA.
Ass't JOSE MARIA MALDONADO.
Ass't JOSE ANTONIO ROMERO.

This day the information asked in the preceding Superior Decree being concluded let the original Espediente be returned to the Superior Political Chief, in compliance with the decree issued this day. I witness whereof, I made a note of it and signed it with my rubric.

Monterey, April 1st, 1836.

ESTRADA.

Having examined the petition heading these proceedings, the Report of the Municipal Authority, and everything bearing in the case, in conformity with the laws and regulations in the matter, Citizen Cruz Cervantes is hereby declared owner in fee of the parcel of land known by the name of San Joaquin, subject to the approval of the Excellent Deputation Senor Nicolas Gutierres, Lieut. Col., Commandant General, Inspector and Political Chief ad interim, did thus command decree and sign, which I attest.

NICOLAS GUITIERRES.
F'CO DEL CASTELLO NEGRETE,
Sec'y.

On the 31st of May this was referred to the Committee on Lands.

(Signed) MALDONADO,
Sec'y.

The Committee on vacant Lands informed of the Espediente ordered at the instance of Citizen Cruz Cervantes who solicited the place called "San Joaquin," finding no objection whatever against and being all in conformity to the 5th article of the Regulations of the 21st of November, 1828, and agreeably to the Law of August 18th, 1824, offer to your Excellency's deliberation the following proposition: They approve of the concession made to Citizen Cruz Cervantes of the place called San Joaquin, on tht 1st of April of the present year.

Monterey, July 6th, 1836.

JOSE A DE LA GUERRA Y CARELLO.
JOSE JOAQUIN GOMEZ.

On the 12th of July it was returned to the Committee for its reformation.

MALDONADO,
Sec'y

Translated by J. C.

I certtfy the foregoing to be a true and correct translation from the Spanish on file in this office.

San Francisco, March 22d, 1852.

GEO. FISHER,
Sec'y.

Filed in office, March 22d, 1852.

GEO. FISHER,
Sec'y.

(*A Document annexed to the Deposition of D. Spence.*)

TITULOS DEL RANCHO DE SAN JOAQUIN A ROSA MORADA.

(*For Map see original between pages* 38 *and* 39.)

A. H. H.

Sello primero seis Pesos. Habilitado provicionalmente por la Administracion de la Aduana Maritima de Monterey de la Alta California para los años de mil ocho cientos trienta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.

A. RAMIREZ.

Rebalidado para el benio de 1836 y 1837.

GUTIERREZ.

A. RAMIREZ.

Nocolas Gutierrez Temente Coronel de Caballeria permanente, Comandante General Inspector y Gefé Superior Politico, interino del Teritorio de la Alta California.

(*Dros* 20 *po.*)

[SEAL] POR CUANTO EL Co. CRUZ SERVANTES, mejicano por naciemento ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Sn. Joaquin cuyos linderos son al Norte Sn. Felipe, al sur Sta. Ana, al poniente el Uano de Sn. Juan y al Oriente las Lomas del mismo sitio; practicadas previamenti las diligencias y averiguaciones segun lo dispuesto pa. las leyes y Reglamentos de la materia, usando de las facultades que me son conferidas en dicreto de este dia y á nombre de la Nacion mejicano he venedo en concederle el terreno mencionado declarando le la propriedad de el por las presentes letras ă reserva de la aprobacion de la Exma Deputacion y bajo las condicion es siguientes.

1a. Que se ſametora á los que estabiliciere el Reglamento que se ha de formar para la distribucion de terrenos Valdios y que entre tanto ni el agraciado ni sus herederos podran dividor ni enagenar el que se les adjudicarimponer censo vinculo, fianza, hipotica, ni otra gravamer aunque sea por causa piadosa ni pasarlo à manas muertas.

2a. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres, destinandolo al uso ò cultivo que mas le acomode ; pero dentro de un año à la mas fabricarà casa y estarà habitada.

3a. Solicitarà del Juez respectivo que le dé posecion juridica en Virtud de este despacho por el enal se demarcaran los linderos en cuyos limites pondràn à mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad.

4a. El terreno de que se hace doncion es de dos sitios de ganda mayor segun el diseño que corre en el espediente. El Juez que diere la posecion lo harà medir conforme à Ordinanza quedando el sobrante que resulte a la Nacion para los usos convinientes.

5a. Si contriviniere à estas condiciones perderà su derecho al terreno y serà deminciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tomeràzon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey ā primero de Abril de mil ocho cientos treinta y seis.

NICHOLAS GUTIERREZ.

FACO. DEL CASTILLO NEGRETE.

Siro.

(*Dros.* $10.)

Queda tormada razon ā fojas 103 y señaldo con el numero 99 en el libro que corresponde y obra en la Secretaria de mi Cargo.

MONTEREY, 2 *de Abril de*, 1836.

CASTILLO.

SELLO CUARTO UNA CUARTILLA.

Habilitado provicionalmente por la Aduana maritima del puerto de Monterey en el Departamento de las Californias para los años de mil ocho cientos cuarenta y mil ochocientos cuarenta y uno. Alverado.

ANTONIO MA. OSIO.

Manuel Jimeno Casarin Secretario del Gobierno del Departamento de las California Certifica que el diceño que anteceda, el cual esta rubricado de mi mano es igual al que corre Original agregada al Espediente que existe en la Scria de mi cargo perteneciente à Dn. Cruz Cervantes, del parage nombrado San Joaquin y para los fines que le convengan al interezado le estiendo la presente en Monterey de nueve de Febrero de mil ocho cientos cuarenta y uno.

MANUEL JIMENO.

SELLO QUARTO UNA CUARTILLA.

Habilitado provicionalmente por la Aduana maritima del puerto de Monterey en el Departamente de las Californias, para los años de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno.

ALVERADO.

ANTONIO MARIA OSIO.

Sor Juez de Paz Constitucional.

SAN JUAN DE CASTRO, *Febo.* 12 *de* 1841. Por presentado y admitido; procedase á dar la posecion qe se solicita á cuyo efecto se señala el Juevez 18 del Corriente citerese á los colindantes pa dicho dia y nom brese previamente medidores y contadores á quienes se les hará saber pa su aceptacion y juramento. Asi yo el Juez de 1a Insta. lo dicrete y firmi.

ANZAR.
Assa M. CASTRAÑARES.

Crnz Cervantes Curdadano Mejicano y vecino de la demarcacion de este Pueblo, ante la Justificacion de V. como mas haya lugor en Dio: digo que habiendo obten ido la Consecion propia del terrano conocido con el Nombre de San Joaquin, ocurro ante de V. con el fin de que se sirta dar mé la posecion juridica conforme esta prevenido en el articulo tu cero de cuyo titulo que se le espidio con fecha de primero de Abril de mil ocho cientos trienta y seis, el cual dividamente a compaño para que obre en los efectos deseados. P. T. a V. Suplico se digne ponerme en la posecion que solicito de le que reciberé merced y justicia.

MONTEREY, *Febrero* 10 *de* 1841.

(*Cruz Serbantes.*)

En la misma fecha presento el C. Cruz Serbantes se le notifico el anto qe antecede y entendido digo lo Oze y se da por citado firmandolo con migo y los de mi Ass'a.

JUAN MRG'L ANZAR,
Ass'a. M. CASTRAÑARES,

En la misma fecha se la libraron las botelas de comparendo en cumplimiento de lo mandado en el anto antecedente y pa consta de al diligencia practicada lo anoto y subsico.

MAN'L CASTRAÑARES, Ass'a.

(*Sello Cuarto una Cuartilla.*)

Habilitado provisionalmenti por la Aduana Maritima del puerto de Monterey, en el Depaı tmento de las Californias, para los años de mil ocho cientos cuarenta y mil ocho cientos cuarento y uno.

ALVARADO. ANTONIO MA OSIO.

Al pie de la Loma qe vé al Norte en el Rancho de San Joaquin (a) Rosa Morada á los dieg y ocho dias del mes de Febrero de mil ocho cientos cuarenta y enro presentes los cindadanos Francisco Pacheco colindante pr su Rancho de San Felipe y el cuido Man'l Larios pr el suyo de Santa Anna Yo el Juez de 1a instancia del 1a Distrito del Depaı tamento de las Californias notifique á los espresados colindantes

qe se hayan presentes el anto anterior y entendidos lo firmaron conmigo y los de asistencia los qe Supieron.

ANZAR.
Ass'a. MAÑ'L. CASTRAÑARES.
MAN'L. LARIOS.
FRANCO. PAREZ PACHECO.

En el mismo parage, dia, mes y año yo el referido Juez en cumplimiento del decreto de Doce del corriente Febrero, presentes los citados colindantes pa la medicion del Terreno señalamento de Linderos y posecion juridica nombro de medidores a Cruz Perez y Juan Espinosa quienes previa la aceptacion y juramento procideron al desermpeño de su encargo: asi yo el mencion ado Juez lo decrete y firme con los de assistencia.

ANZAR.
Ass'a. MAN'L. CASTRAÑARES.
MAN'L. LARIOS.
JOSE MAN'L. PARGAS.
FRAN'CO PEREZ PACHECO.

En la misma fecha y espresado parage se les notifico el nombramto hecho en los C. C. Cruz Perez y Juan Espinosa.

(*Sello Cuarto una Cuartilla.*)

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno.

ALVARADO. ANTONIO MARIA OSIO.

Y dijeron aceptaban y aceptaron dicho encargo y jurararon pa Dios nuestro Señor y la soñal de la Sta. Cruz el cumplier fiel y legalmte á todo su leal seber y entender; sin frande contra persona alguna y no firmaron pa. no saber y lo hisé yo el presente Juez con los de Ass'a.

ANZAR.
Ass'a. MAN'L. CASTRAÑARES,
FRAN'CO PEREZ PACHECO.
MAN'L. LARIOS.
JOSE MAN'L. PARGAS.

In continente yo el referido (Alca) Juez mandé traér el cordel con que se han de medir las tierras y qe se mida de cincuenta varas y en presencia de los colindantes: lo tomaron y con una vara de medir usual Mejicana teniendole en la mano, midieron cincuenta varas pa hacer la referida medida: y lo firmo con los de assistencia.

ANZAR.
MAN'L. LAROIS.
Ass'a. MAN'L. CASTRAÑARES,
JOSE MAN'L. PARGAS.

En el misma parage, mes, año, nombre pa contadores á los C. C. Bemto Carranza y Man'l. Pargas puienes previa la aceptacion y juramente procidieron al desempeño de su encargo. Asi lo decreté mandé y firmé con los de mi assistencia.

ANZAR.
Ass'a. FRANC'O PEREZ PACHECO.
MAN'L LARIOS.
JOSE MAN'L PARGAS.
MAN'L CASTAÑARES,

En el mismo lugar, mes, dia y año á las nueve de la manana yo el presente Juez mandè á los medidores (Sello Cuarto una Cuartilla.) Habilitado provicionalmente por la Aduana Maritima del puerto de Monterey, en el Departmento de las Californias, para los años de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno.

ALVARADO. ANTONIO M'A OSIO.

Nombrados se pougan pa los medidas de tierras que se han de hacer al crudadano Cruz Cervantes y en el mismo punto desdel pie de la y a mencienado Loma y en el lado del Norte hasta la punta del Sanjon llmado del Ieques-quite hay cien cordeles de cincuenta varas y des-de el mismo Sanjon se midieron al L ciento doce cordeles de cincuenta varas habiendose combenido asi por Servantes y su colindata Larios punto doude se berá ponose una mojionera, y des-de esta que queda al O. le servira de lindero el anayo seco concluyendo su sitio en el por tezuelo de los picachos y siendo el terreno irregular, seran dos sitios poco ò mas ó menos de ganado mayor. Y para cnota lo firmo con los de mi asistas.

JUAN MIGL. ANZAR.
Assa. MANUEL CASTAÑARES.
MANL. LARIOS.
FRACO. PEREZ PACHECO.
JOSE MANUEL PARGOS.

En el Rancho conecido con el Nombre de Sn. Joaquin (a) Rosa Morada que es el punto centrico del terreno medido. Yo el el Juez de 1a. Justancia del 1er. Distrito del Departamento de las California á los dies y ocho dias del mes de Febrero de mil ocho cientos cuarenta y uno, des pnes de practicadas las medidas del mencionado Rancho presente los colindantes Cos. Francisco Pacheco, Cruz Cervantes y Manuel Larios que fueron conformes con todo lo mas qe ver convino, mandé entrar en posecion del Rancho al Co. Cruz Cervantes, bajo las me didas citadas y formalidades de costumbre en casos semejantes: lo que verifico arrancando Ierbas y hasien do demostraciones como dueño del terreno qe se le ha dado en posecion y propredad cuyo validacion la antorizo y firmo con los de mi assistancia y los colindantes.

JUAN MIGL. ANZAR.
MANL. LARIOS.
FRCO. PEREZ PACHECO.

Sello Cuarto una Cuartilla.

Habilitado provicionalmente por la Aduana Maritima de Monterey, para los años de 1839 y 1840.

ALVERADO.

ANTONIO MA. OSIO.

Habilitade provisionalmente pr el año de 1841,
[SEAL] pr no haber del bienio prestr arias.

JOSE MAN'L PARGAS.

MAN'L CASTAÑARES, Ass'a.

SAN JUAN DE CASTRO, *Feb.* 20, 1841.

Tomese razon en el cuaderno de poseciones y devuelvase original este Espediente al Interes ado pa qe le sirva de Titulo, asi yo el Juez lo determiné, mandé y firmé con los de mi assistencia.

ANZAR.

MAN'L CASTAÑARES, Ass'a.

En la misma fecha se tomo ragon á foja 1a del libro respectivo y se devolvio el Espediente en 10 fojas utiles, en cumplimiento del antecedente anto y pa constancia lo anoto y rubrico.

Al Jusgado de mi Cargo le corresponden pr los derechos causados, en la practica de las anteriores diligencias los vernte y seis ps cincorrs qe apagecan en la suma de la sigte cuenta.

(*Sello Cuarto una Cuartilla.*)

Habilitado provicionalmente por la Aduana Maritima de Monterey, para los años de 1839, y 1840.

ALVARADO. ANTONIO MA. OSIO.

[SEAL]

Por la presentacion, de un Escrito con recandos y su proveido, . . .	1.	0.	0.
Por tres notificaciones dentro y feura del Juzgado, ...	2.	3.	0.
Por tres notas a 4 R.s, . . .	1.	4.	0.
Nombramiento de Peritos su aceptacion y juramento, ...	1.	5.	0.
Diligencia del aeconocemto del corde,	0.	4.	0.
Posecion de un acto, . . .	3.	0.	0.
Por dos actos de substanciacion, .	2.	0.	0.
Toma de Razon, ...	0.	6.	0.
Por 16 leguas de hida vuelta, .	12.	0.	0.
Por cinco p êe-cretas—a3a, . .	1.	7.	0.
Suma,	26.	5.	0.

JUAN MIG'L ANZAR.

Filed in office Feb'ry. 27th, 1852.

GEO. FISHER,
Sec'y.

(Translation.)

Translation, C.

[FIRST SEAL.]

Authorized provisionally by the Collector of the Maritime Custom House of Monterey for the years 1834 and 1835.

(Signed) FIGUEROA.
(Signed) A. RAMERES.

[SEAL.] *Fees*, $20.

Revalidated for the brenial years of 1836 and 1837, NICOLAS GUTIERRES, Lieut. Colonel of the permanent Cavalry, Commandant General Inspector, and Superior Political Chief ad interim of the Territory of Alta California.

Whereas, citizen Cruz Cerverntes, a Mexican by birth, has applied for his own benefit, and that of his family, for the parcel of land known by the name of San Joaquin, bounded on the North by San Felipe, on the South by Santa Ana, on the West by the plain of San Juan, and on the East by the hills of said place: And whereas, all the requirements of the laws and regulations in the matter have been complied with. Now, by virtue of the authority in me vested, I have thought proper by a decree of this day's date, and in the name of the Mexican nation, to grant to him the aforementioned parcel of land, declaring the same to be his property by these letters patent, subject to the approval of the Excellent Deputation, and under the following conditions.

1. He will submit to such conditions as shall be made by the Regulations hereafter to be established for the distribution of vacant lands, and that meanwhile neither the grantee nor his heirs shall divide nor alienate that which is adjudicated them, nor shall they subject it to rent, entail, bond, mortgage, nor to any encumberance whatsoever, even if it shall be for charitable purposes, nor convey it into mortmain.

2. He may fence it without obstructing crossings, roads, and servitudes, putting it to such use and culture that he may deem best, but within one year, at the farthest, he shall build there a house which shall be inhabited.

3. He shall solicit of the respective Judge to give him judicial possession, by virtue of this patent, by whom the boundaries shall be marked, at the limits of which, besides the land marks, there shall be set some fruit trees, or else wild ones of some usefulness.

4. The land of which donation is made, is of two sitios de ganada mayor (2 sq're leagues), according to the plat annexed to the proceedings. The judge who may give possession, will cause it to be measured agreeably to Ordinance leaving the Excess (sobrante), which may result to the nation for such purposes as may be deemed convenient.

5. If he should contravene these conditions, he shall lose his right to the land which may be denounced by any other person.

Wherefore I command that holding this as a firm and valid title,

the same be entered in the corresponding Book, and be returned to the interested party, for his own security and further ends.

Given in Monterey, on the 1st of April, 1836.

FCO. CASTILLO NEGRETE,
Sec'y.

NICOLAS GUTIENEZ.

Entered in folio 103, and marked number 99 in the corresponding Book in the Secretary's office under my charge.

CASTILLO.

Monterey, April 2nd, 1836.

Fees, $10.

Fourth Stamp, One Cuartilla.

Legalized provisionally by the Collector of Customs in Montery in the Department of the Californias, for the years 1840 and 1841.

(Signed) ALVARADO.
(Signed) ANTONIO MARIA OSIO.

MANUEL JIMENO CASARIN, Secretary of the Government of the Department of the Californias.

I certify that the foregoing plot marked with my scrawl, is similar to the original annexed to the Record of Proceedings on file in the office under my charge, belong to Cruz Cervantes of the place called San Joaquin; and for the purposes that may be convenient to the party interested, I issue these presents in Monterey, 9th Feby., 1841.

(Signed) MANUEL JIMENO.

Fourth Stamp, One Cuartilla.

Legalized provisionally by the Collector of the Customs of Monterey in the Department of the Californias for the years 1840 and 1841.

(Signed) ALVARADO.
(Signed) ANTONIO MARIO OSIO.

TO THE CONSTITUTIONAL JUSTICE OF PEACE.

Cruz Cervantez, Mexican citizen, and a resident of the precinct of this Town, in due form of law to you represents; that having obtained the proper grant of the tract of land known by the name of San Joaquin, I appear before you for the purpose that you will be pleased to give me the legal possession of the same, according to the provision of the third article of the title issued on the 1st of April, 1836, which I hereby duly accompany, for the desired purposes. Therefore I solicit you to be pleased to put me in possession, which I ask, by which I will receive favor and justice.

Monterey, Feby. 10th, 1841.

(Signed) CRUZ CERVANTES.

SAN JUAN DE CASTRO, *Feby.* 12*th*, 1841.

This petition being presented, it is received, let the possession solicited be given, for which purpose Thursday the 18th instant is set apart, let the conterminous neighbors be summoned to appear on that day, and let measures and tally men be previously appointed, who shall be notified of their appointment for their acceptance and taking the oath of office. Thus I, the Judge of the first instance, have decreed and signed.

(Signed) AUZAR.

Assisting Witness.

MANUEL CASTANARES.

On the same day being present, Cruz Cervantes was notified of the preceding Decree, and after having heard it read, said that he understood it, and that he considered himself notified, and signed this with me and my assisting witnesses.

(Signed) JUAN MIGL. AUZAR.

Assisting Witness.

MANL. CASTANARES.

On the same day the summons were issued for the appearance of the parties as provided in the preceding Decree; which I note here as one of the acts, and mark it with my signet. (*A signet.*)

Assistant Witness.

MANL. CASTANARES.

At the foot of the hill on the north side in the Rancho of San Joaquin, (a) Rosa Morada (The purple Rose) on the 18th day of the month of February, 1841, being present citizens Francisco Pacheco adjoining with his Rancho of San Felipe and the citizen Manuel Larios with his Rancho of Santa Ana, I, the Judge of the first instance, of the first District of the Department of the Californias, have notified the aforesaid conterminous neighbors who are present, of the foregoing dec ee, and after having it understood, they signed these presents with merand my assisting witnesses, who could not write.

(Signed) AUZAR.
(Signed) MANL. CASTANARES.
MANUEL LA RIOS.
JOSÉ MANUEL BARGAS.
F'CO. PEREZ PACHECO.

At the same place, same day, month and year, I, the aforesaid Judge, in compliance with the Decree of the 12th of the present month of February, the aforesaid conterminous neighbors being present for

the purpose of measuring the said land, marking out its boundaries, and giving legal possession of the same, have appointed Cruz Perez and Juan Espinga measurers, who, having first accepted the appointment, and taken the oath of office, entered on the discharge of their duties. Thus I, the aforesaid Judge, have decreed and signed with my assisting witnesses.

(Signed) AUZAR.
(Signed) MANL. CASTANARES.
MANL. LARIOS.
JOSÉ MANUEL BARGAS.
FCO. PEREZ PACHECO.

On the same date, at the same place, citizens Cruez Perez and Juan Espinoza were notified of their appointment, and stated that have accepted and do accept the said appointment, and have taken the oath by the Lord our God, and the sign of the holy cross, to discharge faithfully and according to law, their duties to the best of their knowledge and belief, without fraud upon any person, and they have not signed this, not knowing how to write, and I, the present Judge, have signed with my assisting witnesses.

(Signed) AUZAR.

Assisting Witnesses.

(Signed) MANL. CASTANARES.
MANL. LARIOS.
FR'CO PAREZ PACHECO.
JOSE MAL. BARGAS.

Immediately, I, the aforesaid Judge, have caused the rope to be brought, with which the land is to be measured, and to measure off fifty varas of it, and in the presence of the conterminous neighbours it was taken, and with the usual Mexican measuring vara, holding it in the hand, measured off fifty varas of the same for the aforesaid measure, and signed this with my assisting witnesses.

(Signed) AUZAR.

Assisting Witnesses.

(Signed) MANL. LARIOS.
JOSE MANL. BARGAS.
MANL. CASTANARES.

On the same place, month, day, and year, I appointed Benito Carranga and Manuel Bargas tally men, who having first accepted their appointments, and taken the oath of office, entered upon the discharge

of their duties. Thus I have decreed and signed with my assisting witnesses.

(Signed) AUZAR.

Assisting Witnesses.

(Signed) FRANCO. PEREZ PACHECO.
MANL. LARIOS.
JOSÉ MANL. BARGAS.
MANL. CASTANARES.

On the same place, month, day, and year, at nine o'clock in the morning, I, the aforesaid Judge, directed the measurers appointed to prepare for the measurement of the lands, to be made for Cruz Cervantes, and at the same point from the foot of the aforesaid hill, and on the north side to the point of the deep ditch (Slough) called "Tequesquite," there are one hundred cords of fifty varas, and from the said deep ditch there measured to the south 113 cords of 50 varas, and agreement having been made between Cervantes and his adjoining neighbor Larios of the point where the land mark is to be placed, and from thence which is to the east, the "Arroyo Seco" (Dry Creek), shall serve as the boundary completing his "Sitio" in the *Portezuelo de Los Picachos* (the gap of the sharp pointed hills), and the land being of irregular form, there may be two leagues (sitios) more or less. In testimony whereof I sign with my assisting witnesses.

(Signed) JUAN MIGUEL AUZAR.

(Sig'd) *Assisting Witnesses.*

(Signed) MANL. CASTANARES.
MANL. LARIOS.
FR'CO. PEREZ PACHECO.
JOSÉ MANL BARGAS.

In the Rancho known by the name of San Joaquin (a) Rosa Morada, which is the central point of the land measure, I, the Judge of the 1st instance of the 1st District of the Department of the Californias, on this 18th day of the month of February, 1841, after having concluded the measurement of the aforesaid Rancho, being present the conterminous neighbors, citizens Francisco Pacheco, Cruz Cervantes, and Manuel Larios, who agreed to everything that was most expedient to be done, have caused citizen Cruz Cervantes to enter into possession of the Rancho with the aforesaid measurement, with the formalities customary on such occasions, which he verified by pulling up grass, and making demonstrations as the owner of the land, of which possession and ownership was given to him; the validity of which I

authenticated, and sign with my assisting witnesses and conterminous neighbors.

(Signed) JUAN MIGL. AUZAR.
(Signed) FCO. PERES PACHECO.
MANL. LARIOS.
MANL. CASTANARES.
JOSÉ MANL. BARGAS.

SAN JUAN DE CASTRO, *Feby. 20th* 1841.

Let a Register of this Record of Proceedings be made in the respective Book of Possessions, and let this Original be returned to the party interested, that it may serve him as a title. Thus I, the Judge have decided, ordered, and signed, with my assisting witnesses.

(Signed) — AUZAR.
(Signed) MANUEL CASTANARES.

On the same day a Register was made on folio 1 of the respective Book, and the Record of Proceedings was returned on 10 written folios, in compliance with the preceding decree, and in evidence thereof I note and mark the same with my signet. (*A signet.*)

To the Court under my chare for the foregoing proceedings had, are due the twenty-six dollars and five reals which appear in the aggregate of the following account, "to wit:"

For Presentation of a petition with decrees thereon,	$1.00
The summons within and without the court,	2. 3
3 notices or certificates, c 4 Rls. ea.,	1. 4
The appointment of measurers and tally men, and their acceptance and oath of office,	1. 5
Adjusting the cord,	4
Giving possession in one act,	3.
2 Decrees of final proceedings,	2.
Registry,	6
Mileage, 16 leagues going and coming,	12.
For writing 5 folios a 3 rls.,	1. 7
Aggregate,	$26. 5

(Signed) JUAN MIGUEL AUZAR.

I certify the above to be a correct translation from the Original Spanish, of which a correct copy is on file in this office.
March 11th, 1852.

GEO. FISHER,
Sec'y.

Translated and filed in office, March 11, 1852.

GEO. FISHER,
Sec'y.

[1. S. D. K.] Por cuanto el C'mo Cruz Cervantes, Mejicano por nacimento ha pretendido parà su beneficio personal y el de su familia el terreno conocido con el nombre de San Joaquini cuyos lin deros son al N. San Felipe, al S. Santana al P. el llano de S'n Juan al O las lomas del mismo sitio; practicados previamente las deligencias y averiguaciones consernientes segun lo dispuesto por las leges y reglamentos de la materia, usando de las facultades que me son conferidos en decreto de este dia i á nombre de la nacion Mejicana hé venido en conceder le la propri edad de él por las presentes letras á reseroa de la aprobacion de la E. Dep'on i bajo las condiciones seguentes.

B

Grant of Land.

1a. Que se sometera á los que establicreré el reglamento que se ha de formar para la distribucion de terrenos valdios y que entre tanto ni el agraciado ni sus heredoreo podran dividir ni enagenar el que se la adjudicar, imponer, censo, vinculo, fianza, ipoteca ni otro gravamen aunque sea censa pi-adosa ni pasar lo a manos muentas.

2a. Podr cercar lo sin perjudicar las travesias, caminos i servidumbres, destinando lo al uso i cultivo que mas le acomode p'o deutro de un año á lo mas fab ricará casa y estarà habitada.

3a. Solicitara el Juez respectivo que lé de pocesion juridica en virtud de este despacho por el cual se demar caran los linderas eir cuyos limites pondra á mas de sus mojonros algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de que se puce donàcion es de dos citios de ganado mayor segun esplica el diseño que corre en el Espediente. El Juez que diere la posecion lo parà medir conforme á ordenanza quedando el sobrante que resulte á la nacion p'a los usos convenientes.

5a. Si contraveniene à estas condiciones perderá su derecho al terreno y será denunciable por otro. En consecuencia mando que serviendole de titulo el presente y teniendose por firmé y validero setome razou de el en el libro que corresponde i se entregue al interesado para su resguardo i demas fines.

Dado en Monterey, a 1o de April de 1837.

NICOLAS GUTIENEY,

CASTILLO,

FRANCISCO del CASTILLO NEGRETE,

Sec'y.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR THE STATE OF CALIFORNIA:

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office, and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby

certify that the two preceding and hereunto attached pages of tracing paper numbered one and two, and each of which is verrified by my initials (S. D. K.,) exhibit true and accurate copies of the writing upon two pages of an unbound book, entitled titulos on file and forming part of the said Archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the city of San Fran'co Cal., this 18th day of March, 1852.

SAMUEL D. KING,
Surveyor Gen'l Calaf a.

Filed in office March 22nd, 1852.

GEO. FISHER,
Sec'y.

(*Translation of Grant.*)

Nicolas Gutierres, Lieutenant Coronel of Cavalry of the standing army, Commandant General Inspector and Superior Political Chief "ad interim" of the Territory of Upper California.

No. 99. Whereas, citizen Cruz Cervantes a native Mexican, has solicited for his personal benefit, and that of his family, the tract of land known by the name of San Joaquin, the boundaries whereof are, to the North San Felipe to the South Santa Ana, to the West the plain of San Juan, and to the East the hills of the same tract of Land, the prerequisite proceedings and investigations having been verified, according to the Laws and regulations upon the subject, by virtue of the authority in me vested, by this day's decree and in the name of the Mexican nation, I have granted to him the said Cruz Cervantes, the aforesaid tract of land, declaring by these presents, to be his property subject to the approval of the most Excellent Deputation, and to the following conditions, to wit:

1st. That he will submit to those conditions which the Regulations which are to be adopted for the distribution of vacant lands may establish, and that in the meantime, neither the grantee nor his heirs shall be authorized to divide nor to alienate the granted Land, impose Land rent, entail, reversion, mortgage, nor other burthen nor transfer it to "Mortmains."

2nd. He may enclose it withou obstructing the crossing, highways and right of way destining it to the use or cultivation, which may best suit him, but within a year at the farthest, he shall build a house and it shall be inhabited.

3rd. He shall solicit the Respective Magistrate to give him legal possession, in virtue of this title, by whom the boundaries shall be traced out, in the limits of which he shall put, besidesthe land marks, some fruit or forest trees of some utility.

4th. The land of which donation is made consists of two leagues (sitios de ganado mayor) according to the plat annexed to the Record of the proceedings (Espediente.) The magistrate who gives possession

of it shall cause it to be measured according to the ordinance, the surplus which may result shall remain to the nation for the necessary purposes.

5th. Should the grantee violate these conditions, he shall forfeit his right to the Land, and it may be denounced by another.

In consequence of which I command that these presents being held firm and valid shall serve him as a title, and Record thereof be made in the respective Book, and be delivered to the party interested, for his security and other purposes.

Given in Monterey on the 1st day of April, 1836.

NICOLAS GUTIERRES.

CASTILLO.

FRANCISCO CASTILLO NEGRETE,
Secretary.

I do hereby certify that the foregoing document is a true and faithful translation of the annexed Spanish document No. 99.

San Francisco, March 22nd, 1852.

GEO. FISHER,
Sec'y.

Filed in office, March 22nd, 1852.

GEO. FISHER,
Sec'y.

C.

Report of Commission on Agriculture.

[E. S.] La comicion de agricultura encargado de examma la propocicion presentado por el senor Jemeno contraida a pedir la suprema haprobacion de los terrenos qua se an concedido y se hallan comprendidas en las diesleguas lit orales y los terrenos que se reconocian por de las Miciones encuentra la comicion que la procicion referida esta fundada en razon y justicia; pues quiur puese regar que le tome una probidencia tau necesaria como lo pro puesta y han confirme á la ley de 18 de Agosto de 1824, nada mas benefico puede haceree à favor de la agricultura que proporcionar les a los proprietarios del terreno su pacifica y sequra pocesion y por lo tanto la comicion umendose al sentido del Sr. Jimeno propone a la deliberacion de Exma Junta la sigiente propocicion.

1o. Le aprueba la propocicion y con sus articulos que precento el sor. Jimeno en fecha 8 del cornente.

2o. Que in concecuencia se haga la espocicion que se indicu al Supremo Gob'no para el fier que se ha propuesto.

Sala de comiciones de la Junta en Monterey a 28 de April de 1840.

JOSE F. CASTRO.
JOSE RAFAEL GONZALES.

En este dia se le dio 1a lectura, Aprobade en 1o de Mayo.

En 13 de Julio del mismo año se remitio testimonio al E. S. Gob"nor.

[E. S.] La ley de colnizacion de 18 de Agosto de 1824 prevune en su Oct'o 4, que no podran colomzarse los terrenos compendidas en las 20 leaguas limitrofes con cualesquera nacion es trangera, ni 10 literales sin la previa aprobacion del Sup'mo Pader Ejecutivo de la Nacion y en el reglamento concordante espedido en 21 de Novre de 1828 probibe en su act'o 17, colonisar los terrenos que ocupen las Miciones hasta que se devuelva si deveir conciderarse como propedad de las reduciones de los neofitos catecumenes y pobladores Mejicanos.

Niugun terreno baldio de este Departamento se podra Colonizar conforme a dicha ley y reglamento por que todo es litoral y la mayor parte de la estencion de dichos terrenos se reconocian porde las Miciones. Desde la fecha de la indicada ley y reglamento no se pudo conceder a ningun particular terreno alguno por no haber lo permitido las atenciones del Gob'no hasta el año de 1834, que apuradas en medio de sus necesidades los habitantes de este pais para conséguir unos terrenos incultos que omenicados les produjera su substancia y las de sus familias, dirijieron sus repitidos instancia al Gob'no Departamental y esta autondad mundo se forma sen los Espedientes respectivos para que en confirmidad a las leyes y reglamentos de la materia se los fuese dando a los particulares los sitios que se contrabase en estadode colonizar y hallandose mullitud de agracidor poredores de terrenos que el Gob'no se les pace una definitiva concecion relayeado sobre este la correspondiente aprobacion de la estinguida Deputacion y al presento por la Junta Departamental ya es llagado de case que V. E. pida a el Sup'mo Gob'no en conformidad a la sus ó dicha ley y reglam'to la devida aprovacion de todos los terrenos que se han concidido en este Departmento por el Gob'no del mismo ya sea de los que se hayan en las 10 leguas litorales y de los terrenos que se reconocian por de las Miciones parà que los posedores gozen de una pacifica y segura pocesion de sus terrenos y en cuya virtue pido ala Junta tome en consideracion mis proposiciones sigtes :

1a. Que se dirija al Sup'mo Gob'no de la Nacion por esta Junta, uno espocicion contraiela a lo que llevo manifestado para la aprovacion de los terrenos Concididos a los particulares por el Gob'no de este Depar'to y aprobados por la Deputacion y Junta Departamental.

2a. El Exmo S. Gob'dor dirijira al Sap'mo Gobierno una noticia circumstanciado de los terrenos couredidos a paiticulares parà su Sup'mo conocimiento.

Monterey 8 de April de 1840.

MANUEL JIMENO.

{ Sres. Castro y Gonzales. } Dada cuenta a la Exmo Junta, acordó en sesion del dia y del crr'te que pusa a la comicion de Agricultura.

JOSÉ Z. FERMANDES.
Srio.

En 13 de Julio del mismo año se remiteo testimonio al E. S. Gobernordor.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican territory or Department of Upper California, do hereby certify that the five preceding and hereunto annexed pages of tracing paper numbered from one to five inclusive, and each of which is verified by my initials S. D. K., exhibit true and accurate copies of certain documents on file, and forming part of the said Archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the City of San Francisco, Cal., this 13th day of March, A. D., 1852.

SAMUEL D. KING,
Surveyor Gen'l Cal'a.

Filed in office March 22nd, 1852.

GEO. FISHER,
Sec'y.

(*C. Report of Commission of Agriculture.*)

EXCELLENT SIR:—

The Committee on Agriculture having in charge to examine the proposition presented to Ser Jimeno, asking for the supreme approval of the lands which have been granted, and are contained within the ten literal leagues, and the lands acknowledged as belonging to the Missions, believe that said proposition is grounded on right and justice: because who can refuse the taking of so necessary a measure as the one proposed, and so conformably to the law of 18th of August, 1824? Nothing more beneficent can be done in favor of agriculture than to procure to the owners of land a peaceful and secure possession thereof, and therefore this Committee being of Sor Jimeno's opinion, propose to the deliberation of the Excellent Junta the following propositions:

1st. They approve of the proposition and its articles presented by Sor Jimeno on the 8th instant.

2nd. Consequently, that the aforesaid Exposition be made to the Supreme Government to the intended effect.

Committee Hall of the Junta in Monterey on the 28th April, 1840.

(Signed) JOSE Z. CASTRO.
(Signed) JOSE RAFAEL GONZALES.

On this day it was read for the first time.

Approved on the 1st May.

On the 13th of July of the same year a testimony thereof was transmitted to his Excellency the Governor.

EXCELLENT SIR:—

The law of colonization of 18th of August, 1824, reads in its Act 4th that the land contained within twenty bounding leagues with any foreign nation or within the ten literal leagues cannot be colonized without the previous approval of the Supreme Executive Department of the Nation. The respective regulation, issued on the 21st of November 1828, prohibits by its act 17th to colonize the lands occupied by the Missions, until it may be decided whether they are to be considered as property appertaining to the reserves of the Neophytes Cata cumes or Mexican settlers.

According to the said law and regulation no vacant land of this Department could have been colonized, because it is all lettoral, and the greatest part thereof is acknowledged as belonging to the Missions.

Since the date of the mentioned law and regulation, no land was granted to any private individual, because the attentions of the Government did not permit of it until 1854, when the inhabitants of this country, urged by their necessities in order to obtain some unsettled lands, which being cultivated would produce for their support and that of their families, addressed their several applications to the Departmental Government. This authority directed the respective Expedientes should be formed, that in conformity with the laws and regulations on the subject, the lands considered proper for colonization should be donated to private individuals, and whereas many grantees are now possessors of the land, the Government has granted them, by issuing a patent in virtue thereof, a definitive concession has been made unto them, with the corresponding approval of the Ex Deputation, and now of the Departmental Junta. The time is already come that your Excellency may ask for, from the Supreme Government in conformity with the said law and regulation, the proper approval of the lands granted, in this Department, by the Government of the same, both as to these lands situated within the ten littoral leagues, and those recognized as belonging to the Missions, in order that their possessors may enjoy said lands peaceably and with security, In virtue thereof, I beg of his Excellency the Junta to take into consideration my following propositions:

1st, That this Junta may remit to the Supreme Government of the Nation an Expediente of what I have manifested, in order to ask for the approval of the lands granted to private individuals by the Government of this Department, and approved of by the Deputation and Departmental Junta.

2nd. His Excellency the Governor will remit to the Supreme Gov-

ernment a detailed statement of the lands granted to private individuals for its superior knowledge.

Monterey, April 8th, 1840.

(Signed) MANUEL JIMENO.

I certify the foregoing to be a true and correct translation from the Spanish on file in this office.

San Francisco, March 22nd, 1852.

GEORGE FISHER,
Secretary.

Filed in office March 22nd, 1852.

GEORGE FISHER,
Secretary.

This opinion having been presented to the most Excellent, the Junta, in the session of the 9th inst., it was ordered to be referred to the Committee on Agriculture.

JOSE Z. FERNANDEZ,
Sec'y.

On the 13th July of the same year a testimony thereof was transmitted to his Excellency the Governor.

A. RUBRIC.

El Cindadano Melchor.

Muzquez, Coronel de Ejercito, temerite Coronel Mayor del Regimente de Nacionales de este Cindad y tieniente Gobernador del Estado libre de Mexico.

(*B. Colonization Law.*)

El Ex'mo S'r Ministra de Relaciones Interiores y enteriores con fecha de 18 del corriente me ha dirigodo el decirto siyniente.

Num. 72. Ex'mo S'r El Supremo Poder Ejecutivo me ha dirigido el decreto que signe.

El Supremo Poder Ejecutive nombrado provisconalm'te por el Soberano Congress General Constituyente todos los que las presentes vieren y entendieren, Sabed: Que el mismo Soberano Congreso ha decretado lo que signe: El Soberano Congreso General Constituyente de los Estados Unidos Mexicanos, ha tenido à bien decretar.

1o. La Nacion Mexican ofrece à los extrangeros que vengan a establerce en su territorio seguridad en sus personas y en sus propiedades, con tal que se sujeten à las leyes del pais.

2o. Son objectos de esta ley aquellos tenenos de la nacion que no siendo de propiedad particular ni pertenierentes à ninguna corporacion ó Pueblo pueden ser colonizados.

3o. Para este Efecto los Congresos de los Estados formaran à la mayor brevedad las leyes ó reglementos de colonizacion de su respectiva demarcacion, conformandose en todo à la Acto constitutiva, Constillicion General y reglas establecidas en este ley.

4o. No podran colonizarse los territorios comprendidos entre las veinte leguas limitrofes con cualyniera nacion extrangera ni driz litorales sin la previa aprobacion del Supremo Poder Ejecutivo general.

5o. Si para la defensa ó sequridad de la nacion el Gobierno de la Federacion tuviese por conveniente hacer uso de alguna porcion de estos terrenos para construir almaceneo, assenales, ú otro edificia publicos podrà, verificarlo con la aprobacion del congreso general y en ser receso con la del consejo de Gobierno.

6. No se podrà antes de cuatro años, deslle la publicacion de esta ley, imponer derecho alguno por la entrada de las personas de los extrangeros que vengan à establicerse por prinerà ves en la Nacion.

7o. Antes del año de 1840 no podrà el Congreso General prolibir la entrada de extrangeros ó colonizar à no ser que circumstancia imperiosas le obligeron à ello con respecto à los individuos de alguna nacion.

8o. El Gobierno sin perjudicar el objecto de esta ley tomara los medidos de precaucion que luzque oportunas para la seguridad de la federacion con respecto a los extrangeros que vengan á colonizar.

9o. Debera atenderse con preferencia en la distribucion de terrenos á los cindadanos Mexicanos y no se hará distincion alguna entre ellos, sinó unicamente a aquella a qué dén derecho los meritos particulares y servicios hechos a la Patria ó en igualidad de circumstancias, la vecindad en el lugar a que pertenecen los terrenos que se repartan.

10o. Los Militares que con areglo á la oferta de 27 de Marzo de 1821 tengan derecho á tierras seran atendidos en los Estados en vista de los Diplomas que al efecto les libre el Supremo Poder Ejecutivo.

11o. Si por los derechos de capitalizacion segun los probabilidades de la vida el Supremo Poder Ejecutivo tuviese por oportuno enagenar algunos porciones de tierracen favor de cuales quiera empliados, asi militares como civiles de la federacion, podiá verificarlo en los vàldios de los territorios.

12o. No si permitirá que se reuna en una lolo mano como propridad mas de una legua cudrada de cinco mil varas de terra de regadio, cuartio de superficie de temporal y seis de superficie de abrevadero.

13o. No podran los nuevos pobladores pasar sus propiedades à manos mucitas.

14o. Esta ley guarantiza las contrato que los empresarios celebraren con las familias, que traigan á sus expensas siempré que no sean contrarios á los leyes.

15o. Ninguno que à virtud de está ley adquiera tierras en propiedad, podra conservar las estando aveindad fuera del territorio de la Republica,

Lo tendra entendido el Superno Poder Ejecutivo y dispondra lo necesario á su compliemiento, trarsindo lo impirmir, publicar y circular.
Mexico 18 de Agosto de 1824.-4o.-3o.

CAYETANO YBARRA.
Presidente.
PEDRO DE ATRUMADA.
Deputado Secretario.
MANUEL DE VILLA Y LASIO.
Deputado Secretario.

Por tanto mandanos á todo los tribunales, Justicias, Gefés, Gobernadores y dernas Autoridades asi civilis como Milòtares y eclesiastidas de cualquiera clase y dignidad, que guarden y hagan guardar, cumplir y ejecutar el presente Decreto, en todas sus partes, tendreis lo entendido pará su complimiento y dispondreis se imprima publique y circule.
En Mexico a 18 de Agosto de 1824.

NICOLÁS BRÁRO.
Presidente.
VICENTE GUERRERO.
MIGUEL DOMINGUEZ.
A. D LUCAS ALAMAN.

"Y lo comunico a V. E. parà su inteligencia y cumplimiento."
Y para que llegue á noticia de todos, mandò se publique por Bando en este Capital, y en las demas cindades, villas y lugares del distrito de mi cargo, fijandose en los parajes acostumbrados y circulandose à quienes toque aridar de su observancia. Dado en Mexico a 23 de Agosto de 1824.

MELCHOR MEZQUIS. MANUEL DE AGUIRRÉ.
Oficial Primero.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California, do hereby certify that the annexed page of tracing paper, which is verified by my initials, (S. D. K.) exhibit a true and accurate copy of a certain paper or document on file, and forming part of the said Archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this 1st day of January, A. D., 1852.

SAM'L. D. KING.
Surveyor Gen'l Cal.

Filed in office June 16th, 1852.

GEO. FISHER,
Sect'y.

[D.]

Citizen Melchor Muzquiz, Colonel of the Army Surveyor, Lieutenant Colonel of the Regiment of the Militia of this city, and Lieutenant Gobernor of the Free State of Mexico.

His Excellency, the Minister of Foreign and Home Departments, under date of 18th instant, has transmitted to me the following Decree:

No. 72.

EXCELLENT SIR:

The Supreme Executive Power has transmitted to me the following Decree:

The Supreme Executive Power appointed provisionally by the Sovereign General Constituent Congress to all who these presents may see or hear, know ye: That the said Sovereign Congress has decreed the following: The Sovereign General Constituent Congress of the Mexican United States, has deemed it expedient to decree,

1st. The Mexican Nation offers to those Foreigners who may come to establish themselves in its Territory, security in their persons and their property, provided they submit to the Laws of the Country.

2nd. Those lands of the nation which are not the property of any individual, corporation, or town, are the object of this law and they may be colonized.

3rd. For this purpose the Congress (Legislatures) of the States will with the least delay enact laws or regulations for colonizing within their respective boundaries, conforming in all respects to the Constitution act, the General Constitution and the rules established in this Law.

4th. The lands embraced within the twenty leagues bordering on any Territory Nation or within the ten lettoral leagues cannot be colonized without the previous approbation of the Supreme General Executive power.

5th. If the Government of the Federation should deem it expedient to make use of any portion of these lands for building store houses, arsenals, or other public buildings for the defence or security of the nation, it can do so with the approbation of the General Congress and during its recess with that of Government Council.

6th. No tax can be levied on the persons of Foreigners who may come to settle for the first time within the nation, before the expiration of four years from the date of the publication of this Law.

7th The General Congress cannot prohibit the entrance of Foreigners for colonizing before the year 1840, unless impervious circumstances may compel it thereto in relation to individuals of some nation.

8th. The Executive without prejudicing the object of this law, will adopt such measures of precaution as may be deemed expedient for

the security of the Federation relative to Foreigners who may come to colonize.

9th. The Mexican citizens shall be attended to in reference, in the distribution of lands, and there shall be no distinction made among them, except such only to which the particular merits and services rendered to the country may give a right, or in equal circumstances the residence of the place to which the lands which may be distributed may appertain.

10th. The Military men, who, according to the offer of the 27th March, 1821, may have right to lands, shall be attended to in the State, by presenting the warrants which for that purpose the Supreme Executive Power may issue them.

11th. Should the Supreme Executive Power deem it expedient by the decrees of Capitalization, according to the probabilities of life, to alienate some portions of the lands to any employes of the Federation, Military or civil, it may do so of the vacant lands of the Territory.

12th. It shall not be permitted, that there shall be united in one hand as property, more than one square league, of five thousand varas of land, susceptible of irrigation, or superfecies of four leagues of temporal (dependent on the rains) and a superfecies of six leagues of pasture lands.

13th. The new settlers shall not be competent to pass their property in mortmain.

14th This law guarantees the contract which the Empesarios may make with the families which they may bring at their expense, provided they be not contrary to the laws.

15th No person who shall by virtue of this law acquire lands as property shall continue to hold the same, being a resident without this Republic.

16th. The Executive shall proceed in conformity with the principles established in this law to the colonization of the Territories of the Republic.

The Supreme Executive Power shall take cognizance of this and shall do what is necessary for its fulfillment by causing the same to be printed, published, and circulated.

Mexico, August 18th, 1824–4–3.

CAYETANO YBARRA,
Presidente.
PEDRO de AHMUDA,
Deputy and Secretary.
MANUEL VILLA Y. COSIO,
Deputy and Secretary.

We therefore command all the tribunals, Judges, Chiefs, Governors, and the other authorities, Military and Ecclesiastical, of whatsoever class or grade they be, to keep, and cause to be kept, comply with

and execute this present decree, in all its parts. Know ye for its fulfillment and cause the same to be printed, published, and circulated.

Mexico, August 18th, 1824.

NICOLAS BRAVO,
President.

VICENTO GUERRERO, MIGUEL DOMINGUEZ TO DON LUCAS ALAMAN:

And I communicate the same for your Excellency's information and compliance.

And that it may come to the knowledge of all, I command the same to be published as an Edict in this Capitol, and the other cities, towns, and places of the district under my charge, and to be posted up in the customary places, and to be circulated to whom its fulfillment appertains.

Given in Mexico on the 23rd August, 1824.

(Signed,) MILCHOR MUZQUIZ.
MANUEL de AGUERRE,
Chief Clerk.

I certify the foregoing to be a a true and correct translation made by me from an authenticated copy, the original Spanish Document on file in the Office of the U. S. Surveyor General for California, which authenticated copy is on file in this office in Case No. 56, Cruz Cervantes for the Rancho of San Joaquin, alias Rosa Morada, June 16th, 1852.

GEO. FISHER,
Sec'y,

Filed in Office June 16th, 1852. GEO. FISHER,
Sec'y.

(*E. Extracts of the Journal of the Junta Departmental.*)

Sesion del dia 9 de Abril.

Leida y aprobada el acta de la sesion anterior se dio cuenta con una propocicion del Sr. Jimeno para que se solicite la suprema aprobacion de los terrenos que se han concedido en las dies lequas litorales y los que se renocian por de las Miciones y acordo que se pasé a la Comicion de Agricultura: con lo que se llevanto la sesion publica pora estar en secreta de reglamento no asistriendo los Srs. Carrillo y Requena por enformedad.

MANUEL JIMENO,
Presidente.
JOSE Z. FERNANDEZ.

Sesion del dia 28 de Abril.

Se dio primera lectura del dictamen de la comicion de Agricultura

sobre la solicitud de la suprema aprobacion de terrenos litorales y de Misciones que se hau concedido á varrions particulares.

MANUEL JIMENO,
Presidente.
JOSE Z. FERNANDEZ.

Sesion del dia 1o de Mayo.

Leida y aprobada el acta anterior se puso á discusion y fue aprobado asi en su tolatidad como en lo particular cada uno los dos articulos de que consta el dictamen de la comicion de Agricultura relativo a que se solicito del Supremo Gobierno la aprobacion de los terrenos litorales y conocidos por de Miciones que ha dado el Departamental a varrions particulares.

MANUEL JIMENO,
Presidente.
JOSE Z. FERNANDEZ,
Scrio.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the Archives of the former Spanish and Mexican territory or Department of Upper California, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered 1, 2, and 3, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate extracts of the Journal of the Public Sessions of the Departmental Council or Junta for the year 1840, which is on file, and forms part of the said Archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this 7th day of June, 1852.

SAMUEL D. KING,
Surveyor Gen'l Cala.

Filed in office June 16th, 1852.

GEO. FISHER,
Secretary.

(*E.*)

Session of the 9th day of April.

Having read and approved of the act of the preceding session, a report of the same was made with a proposition introduced by Sor

Jimeno in regard to soliciting the supreme approval of the lands granted within the ten littoral leagues, and of those acknowledged as pertaining to the Missions, which was ordered to be referred to the Committee on Agriculture; after which the public session was closed, in order to enter into secret session according to regulations. Srnores Carrillo and Requena were not present on account of illness.

(Signed) MANUEL JIMENO,
President.

(Signed) JOSE Z. FERNANDEZ.

Session of the 28th day of April.

* * * * * * * *

The opinion of the Committee on Agriculture relative to the soliciting the supreme approval of the littoral and Mission lands granted to several individuals was read for the first time.

(Signed) MANUEL JIMENO,
President.

(Signed) JOSE Z. FERNANDEZ.

Session of the 1st day of May

The reading of the preceding act having been approved it was then submitted for discussion, and each of the two articles contained in the opinion of the Committee on Agriculture relative to the solicitude of the Supreme Government for its approval of the littoral and Mission Lands donated by the Departmental Government to several individuals, were approved in their general as well as in their particular bearing.

* * * * * * *

(Signed) MANUEL JIMENO,
President.

(Signed) JOSE Z. FERNANDEZ.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

I certify the foregoing to be a true translation from the Spanish document filed in this office in case No. 56.

San Francisco, June 16th, 1852.

GEO. FISHER,
Secretary.

Filed in office June 16th, 1852.

GEO. FISHER,
Secretary.

(*F. Ynoten.*)

Yndice de los terrenos adjudicados y personas á quienes se las ha concedido.

San Joaquin	C.	á Dn. Cruz Cervantes	156

En este Yndice ha el numero de 433. Espedientes: peró pr. equivocacion se pasa en la numeracion del 329 al 340 habiendo seguida en la misma.

MANUEL JIMENO.

OFFICE OF THE SURVEYER GENERAL OF THE UNITED STATES FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, Surveyer General of the United States for the State of California, and as such now having in my office and under my charge and control, a portion of the Archives of the former Spanish and Mexican territory or Department of Upper California, do hereby certify that the above and foregoing is truly taken from a document designated as Yndex of land titles which is on file, and forms part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this 4th June, 1852.

SAMUEL D. KING,
Surveyer Gen'l. Cal'fa.

Nota. In examining the Original Yndex within referred to, I find that the letter C. and N. is in each case ended in the second column, and those letters respectively appear to be in lieu of, and *and* stand for the abreviations "Conceded'o" and "Neg'do.," which are the remarks made in that column in the first and second cases inscribed in said Yndex.

San Francisco, Cal., 29th June, 1852.

SAMUEL D. KING,
Surveyor Gen'l. Cal'fa.

Filed in office June 30th, 1852.

GEO. FISHER,
Sec'y.

(*H. General Regulations.*)

Despocrones Generales.

O.

Reglamento para la colonizacion de los territorios de la Republica.

Estando prevenido en el articulo 16 de la ley General Colonizacion de 18 de Agosto de 1824 y el Gobreno conforme á los prucepios establecidos en dicho ley proceda á lo colonizacion de los territorios de la Republica ; y sieñdo muy oportuno parà darsé á dicha articulo el mas prurtual y esato cumplimiento, dictar algunas disposiciones generales que facilitia su ejecucion en los casos que hagan occurriendo el E. S. Presidente ha teindo a bien acordar los articulo que siguen.

1o. Le antorisa á los Gefés Politicos de los territorios para que con arreglo á la ley del Congreso General de 18 de Agosto de 1824 y bajo las calideades que despues se espresan medan conceder terrenos baldios de sus respectivos territorios a los empresarios familias ó personas particulares Mejicanos ó estrangeros que lo soliciten con el objecto de cultivar los ó habitar los.

2o. Todo pretendiente de terrenos sea empresario caboza de familia ó persona particular se presentará al Gefé politico del respectivo territorio por instancia en que se esprese su nombre, patria, profesion, el numero, naturaleza, religion, y de mas circumstancias de las familias ó personas con q. quiere colonizar, marcando asi mismo con la distincion posible y decubiendo en un diseño el terreno que solicita.

3o. El Gefé politico procederá desde luego á tomar el informe y sea bastante sobre si de encuentran ó no en la solicitud las calidades que requiere la citada ley de 18 de Agosto asi en el torreno, come en el pretendiente y grava que se atrenda a este serrisllam'te ya para que se le prefieree oyendo al mismo teimpo á antoridad mucipal respectiva sobre se halla ó no algun reparo en la concecion.

4o. En vista de todo el Gefé politico acedara ó no á dicho solicitud arreglandose esactamente á los leyes aplicables á la materia con especialidad á la ya citada de 18 de Agosto de 1824.

5o. Las concesiones hachas á personas á familias particulares no se tendran por velederas definitavamente sin previo consentimento de la deputacion territorialá cujo efecto se pusaran a esta los espedientes respectivos.

6o. Cuando el Gefé Politico no obtuviere la aprobacion de la Deputacion territorial dara cuenta al Supremo Gobierno con el espediente de la materia pa su resolucion.

7o. Las concesiones hechas á empresarios para que colonizen con muchas familias no se tendran por valideros difinitivamente hasta no obtener la aprobacion del supremo Gobierno a q. se dara cuenta con el espediente, agregandose a este el enforme q. paresca á la deputacien territorial.

8o. Hecha definitivamente la concecion que se solicita se espiderá un documento firmado por el Gefé politico que sirva de titulo al inter-

esado espesandose en este que la concecien se estiendo con entera conformidad á lo dispuesto por las leyes en cuya virtud se procedera á la q. pocesion de todas las solicitudes que se presenten y concesiones que se hagan quedaran los correspondientes ascientos en un libro destinado al efecto con los diseños de los terrenos que se considieren y se pusara al Supemo Gobierno cada tri mestre ma nota circumstanciado.

10o. No se podra admitir capitulacion alguno pará nueva publicacion si no es q. el capitulante se obligue á presentar en calidad de pobladores á lo menos doce familias.

11o. El Gefé Politico señalara al nuevo poblador un tiempo proporcionado deutro del cual precisam'te deberá cultivar á ocupar el terreno en los terminos q. con el numero de personas ó familias que halla capitulado en el cencepto de que no haciendole que dará nulá la concecion del terreno, prediendo sin embargo el Gefé politico rebulidar la en proporcion á la parto en que hubiese cumpilado el interesado.

12o. Todo nuevo poblador despues que haya cultivado ú ocupado el terreno con arreglo á su capitulacion cindara do justificarlo anté la antoridad Municipal para que traciendose el aciento oportuno, consolide y asegure su dros. de propridad para poder disponer librement de ella.

13. La Reunion de muchas familias en una poblacion seguiera en su formacion, Gobierno y policia interior las reglas establicidos por las leyes vigentes para la demas poblaciones de la Republica, temindose especial cindado en las nuevas de que se construyan con la posible regularidad.

14o. El minimum del terreno regadio que se dé para colonizacion por una mano sara de 200 varas.

15o. El terreno que se dé para un solar sera de sien varas.

16o, Los huecos q. quedaren entre los terrenos colonizados podran distribuierse entre los posedoses limitrofes q. hayan cultivado con aplicacion los suyos y no hayan recibido toda la estencion de terreno que la ley permite, ó á los hijos de los mismos posedores que los soliciten para concretar las propiedades de sus familias, temeridose pará esto muy presente la moralidad ó industria de los interosados.

17o. En los territorios en que haya Miciones, los terrenos que esta ocupan, no podran colonizarse por ahora y hasta que se resuelva si deben considerarse como propiedad de las reduciones de los neofitos catecumenos y pobladores Mejicanos.

ESCOPIA,—MEJICO 21 *de Novembeie de* 1828.

Ortiz de la torre,—corregida,—no rubrica.—Escopia. Puerto de S. Diego, Nov're 19 de 1829.

AUGUSTIN V. ZAMORANO.

OFFICE OF THE SURVEYOR-GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, Surveyor-Genl. of the United States for the State of California, and as such now having in my office, and under

my charge and control, a portion of the Archives of the former Spanish and Mexican territory or Department of Upper California do hereby certify that the five preceding and hereunto annexed pages of tracing paper numbered from one to five inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain documents now on file and forming part of the said Archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, not having a seal of office, at the city of San Franco. Cal. this sixteenth day of March 1852.

SAMUEL D. KING,
Survy'or Gen'l Calf'a.

Translated April 15th, 1852.

GEO. FISHER,
Sec'y.

Filed in office July 3rd, 1852.

GEO. FISHER,
Sec'y.

(H)

[SEAL] General Provisiones or Regulations for the Colonization of the Territories of the Republic.

The 16th Art. of the general law of Colonization of 18th August 1824 provides that the Government in Conformity with the principles therein established, shall proceed to the Colonization of the Territories of the Republic; and it being of moment to issue some general Rules to facilitate the execution of the said law in cases which may occur, in order to comply punctually and exactly with the aforesaid article. His Excellency the President has thought proper to adopt the following resolutions.

1st 1*st*. The Political Chiefs of the Territories are hereby authorized to grant vacant lands situated within their respective Territories to EMPRESARIOS (undertakers or contractors) families or individuals either Mexicans or Foreigners who may petition for them with the object of cultivating or settling the same:—said grants shall be made according to the law of the General Congress of 18th of August 1824, and under the qualifications hereinafter expressed.

2d. Every petitioner, whether he be an EMPRESARIO, head of a family, or an individual, shall appear before the Political Chief of the respective Territory, by a petition stating his name and the country, profession, number, birth-place, religion and other circumstances of the families or persons with whom he may wish to colonize, showing at the same time clearly and distinctly and describing on a sketch the land petitioned for.

3d. The political chief shall immediately proceed to take the necessary information in order to ascertain whether the requirements of said law of 18th August are embraced in the petition, and whether the pe-

titioner as well as the land possess the requisite conditions so as to attend to the petitioner at once, or to require of the respective municipal authorities whether there is or not any objection to the grant.

4th. In view of all these the political chief will grant or not, said petition in strict accordance with the laws on the subject, and especially in reference to the above mentioned law of August 18th 1824.

5th. The grants made to individuals or families shall not be definitely valid without the previous approval of the Territorial assembly, to whom the respective expedients shall be referred.

6th. If the political chief does not obtain the approval of the Territorial assembly, he shall report the same to the Supreme Government, accompanying the Espediente for its decision.

7th. The grants made to the EMPRESARIOS who wish to colonize with several families shall not be held definitely as valid until the approval of the Supreme Government be obtained, to which an account must be given accompanying the Espediente with such report as the Territorial assembly may think proper to make.

8th. Having been definitely made, a patent signed by the Political Chief shall be issued, which shall serve as a title to the interested party, expressing therein that the grant has been made in strict accordance with the provisions of the laws, by virtue of which they shall proceed to give the possession.

9th. Of all the petitions presented, and grants made, the corresponding entries shall be made in a Book kept for that purpose with the plats of the lands granted, and a detailed statement thereof shall be transmitted quarterly to the Supreme Government.

10th. The proposition shall be admitted for a new settlement unless the persons proposing the same, bind himself to present as settlers twelve families at least.

11th. The Political Chief will determine the proposition all time within which shall cultivate, or occupy the land under the terms, and with the number of persons or families agreed upon, with the understanding that if said settler should fail to fulfil the conditions, the grant of the land shall be null and void, neverthelesss the Political Chief may confirm the same in proportion to the part which the interested party may have fulfilled.

12th. Every new settler after having cultivated or occupied the land according to his agreement shall prove such acts before the municipal authority that making the proper entry, his right to the property may be strengthened and confirmed and thus enable him to dispose freely of it.

13th. The assemblage of several families into a settlement shall follow in their organization, interior government and policy, the rules established by the existing laws for the other settlements of the Republic taking especial care that the new settlements be laid out and built up with regularity.

14th. The minimum of arable land granted for colonization shall be for each individual 200 Varas square the *minimum* of farming (tem-

poral) land shall be 800 Varas; and the *minum* of pastoral lands (abrevadero) shall be 1200 Varas.

15th. The land granted for a building lot (Salar) shall be 100 Varas.

16th. The vacant tracts of land lying between the colonized lands may be distributed among the adjoining owners who may have carefully cultivated their own, and have not received the quantitiy of land allowed by the law, or to the children of those same owners who may have petitioned for them, in order to unite the possessions of their families; remembering very particularly to give the preference in such grants to the moral and industrious.

17th. In these Territories where there are missions, the lands occupied by them, cannot be colonized at present nor until it shall be resolved whether they have to be considered as the property of the settlements of Neaphytes, Catechumens, and of Mexican settlers.

The foregoing is a true copy. Mexico 21st Nov. 1828. Ortiz de la Torre—corrected—a scroll.

PORT OF SAN DIEGO, *Nov. 19th*, 1829.

It is a true copy.

(Signed) AUGUSTIN VR. ZAMORANO.

SAN FRANCISCO, 14*th April* 1852.

I certify the foregoing to be a true and correct translation from the Spanish.

Filed in office July 3d 1852.

GEO. FISHER,
Sec'y.

S. JOAQUIN p'r D. CRUZ CERBANTES.

En 31 de mayo. A la Comision de Terrenos.

GOMEZ.

En y Julio volvio dictaminado y se devolvio à la comis'n p'a su reforma.

(*A Fragment of Espediente.*)

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR THE STATE OF CALIFORNIA.

I, Samuel D. King, Surveyor General of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican Territory, a Department of Upper California, do hereby certify that the above and foregoing writing upon this sheet of tracing paper is a true and accurate copy of the writing upon a paper in bundle No. 2, containing acts of the Departmental Assembly, under a cover entitled "Carpeta gxāl in la que consistun las de las Espedientes parados a comisiones Mayo de 1836," on file and forming part of the archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this 15th day of March, 1852.

[SEAL.] SAMUEL D. KING,
Sur. Gen'l Cal.

SAN JOAQUIN by D. CRUZ CERVANTES.

On the 31st May. To the Committee on Lands.

(Signed) GOMEZ.

On the 9th of July. Reported and returned to the committee to reform the report.

I certify the foregoing to be a true and correct translation from the annexed Spanish Document, drawn on tracing paper, and authenticated by Sam'l D. King, Surveyor Gen'l Cal., on the 15th March, 1852, and on file in this office.

GEO. FISHER.
Sec'ty.

U. S. Land Commission, San Francisco, July 6th, 1852.

Filed in office, March 22d, 1852.

GEO. FISHER,
Sec'ty.

No. 11. (Copy.)

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

SAN FRANCISCO, *March 15th*, 1852.

SAM'L D. KING, Esq., *Surveyor General.*

SIR:—There is pending before the Board of Commissioners a petition in favour of Cruz Cervantes, being No. 56 on the docket, of the Board, claiming a tract of Land under a grant from Governor Nicholas Guterrez to Cruz Cervantes, dated April 1st, 1836, which tract of land is called San Joaquin or Rosa Morada, as is described as follows: On one side the Arrayo of San Filipe, on the second side the hills or mountains of San Joaquin, on the third side the Arrayo Santa Anna, and on the fourth a line drawn through the plain of San Juan, containing about two square leagues situated in the county of Santa Clara. Will you please inform the Board whether the Mexican Archives in your office show that such a grant was made; whether it was approved by the Territorial or Departmental deputation, and when; whether the papers relating to said Grant appear in all respects fair and genuine, and whether any particular circumstances have come to your knowledge calculated to cast suspicion on the genuineness and validity of the claim.

Very respectfully yours,

(Signed) GEO. FISHER.
Sec'ty.

(*Report of U. S. Surveyor General.*)

SURVEYOR GENERAL'S OFFICE,
SAN FRANCISCO, *March 16th*, 1852.

TO THE SECRETARY OF THE COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

SIR:—In reply to your inquiry, No. 11, I have the honor to state that there is among the archives in this office an Espediente No. 156, purporting to show that such a grant was made as specified in said inquiry, said document does not show the approval of the Departmental Assembly. The papers in that case appear to be fair and genuine, and I know of nothing among said archives calculated to cast suspicion thereon.

Very respectfully yours,
SAMUEL D. KING,
Surveyor General.

Filed in office March 16, 1852.

GEO. FISHER,
Sec'ty.

Index of the tracts of land adjudicated and of the person to whom they have been granted.

(*F. Translation.*)

San Joaquin.	Granted.	To Don Cruz Cervantes.	156

There are in the index 433 Espedientes, but by mistake the numeration runs from 329 to 340, which error contines to the end.

(Signed) MANUEL JIMENO.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

I certify the foregoing, to be a true and correct translation from the Spanish Document filed in office.

San Francisco, July 1st, 1852.

GEO. FISHER,
Sect'y.

SURVEYOR GENERAL'S OFFICE,
SAN FRANCISCO, CAL., *June 29th*, 1852.

SIR:—In compliance with your request, I have to state that upon examining the archives in office, it does not appear that there is among them any Book, journal or record purporting to shew the com-

plete proceedings of the Territorial Departation of California, for any month of the year 1836.

Very respectfully your obedient servant,

SAM'L D. KING,
Surveyor Gen'l Cal.

WM. CAREY JONES, Esq, *Present.*
Filed in office June 30th, 1852.

GEO. FISHER,
Sec'y.

(*Motion to Dismiss, &c.*)

Before the Board of Land Commissioners for ascertaining and settling private land claims in California, March 16th, 1852.

In the matter of the Claim of Cruz Cervantes, claiming the Rancho of San Joaquin. And now it being moved by the Counsel for the Claimant, that the said cause should be set down for hearing on the petition and testimony of the Claimant.

The undersigned moves the Board that the petition may be dismissed, for the following reasons:

First. Because the Claimant has not filed a copy of the Espediente existing in the Archives, being the evidence of the proceedings had upon which the alleged title was issued to the Claimant, said Espediente being required by the 8th section of the Law creating this Board, and a rule of the Board to be filed as a part of the Claimant's "claim, right, title and grant."

2nd. Because the Claimant has not made out a prima facia case for a decree of confirmation of his alleged claim, or any part thereof.

GEO. W. COOLEY,
U. S. Law Agent.

Filed in office March 16th, 1852.

GEO. FISHER,
Sec'y.

(*Motion for Certificate of Confirmation.*)

Commission of Private Land Claims in California, Cruz Cervantes claiming the Rancho of Rosa Morada, No. 56.

In this case the Claimant by his Counsel moves the Board for a certificate according to law of the confirmation of said claim, as rendered on the 3d day of August, 1852.

JONES, TOMPKINS & STRODE,
Attorneys for Claimant.

Filed in office Dec. 13th, 1852.

GEO. FISHER,
Sec'y.

(*Motion to Certify Decision.*)

Commission to ascertain and settle Private Land Claims, Cruz Cervantes Claimant, No. 56.

The Counsel for Claimant move the Board to adopt the following order:

Ordered, That the decision of the Board heretofore rendered on the validity of the claim of Cruz Cervantes, case No. 56, on the Docket of the Board be certified, together with the reasons on which the same is founded, to the United States District Attorney.

By his Attorneys,
JONES, TOMPKINS & STRODE.

Filed in office Aug't 31st, 1852.

GEO. FISHER,
Sec'y.

Motion to Certify Decision of Board.

Commission to ascertain and settle Private Land Claims in California.

No. 56, Cruz Cervante, Claimants, claiming the Rancho of San Joaquin or Rosa Morada.

In this case it is conceded and agreed on the part of the claimant that the land claimed is South of the 37° North Latitude, and in the Southern Judicial District of California, as fixed by Law establishing District Courts of the United States in said State, and said claimant asks that the decision rendered by said Commission on the validity of his said claim be certified, together with the reasons on which it is founded to the District Attorney of the United States according to law.

By his Attorneys,
JONES, TOMPKINS & STRODE.

Filed in office Sep'r 6th, 1852.

GEO. FISHER,
Sec'y.

(*Motion.*)

Mr. Jones moved the Board for leave to withdraw the original papers in the above cases, certified copies of the same heretofore filed with the petitions to remain on file in the office.

Filed in office Sept. 27th, 1852.

GEO. FISHER,
Sec'y.

BOARD OF COMMISSIONERS ON CALIFORNIA LAND CLAIMS.

CRUZ CERVANTES, Claimant,
vs
THE UNITED STATES, Defendant.

(*Opinion of Com'r Thornton.*)

Before I enter upon the consideration of the questions which relate directly to the validity of the claim in this case, I will give my views

of the subject, upon which this Board was intended to act, and of the foundations upon which any opinion that I feel authorized to give must rest, under the act of 3d of March, 1851. A distinct annunciation of this basis is not only due to those who are to be effected by the administration of this Act of Congress, but being settled in my own mind, will serve as a polar star to guide me through the wide tract of conflicting opinions, which have been the subject of our anxious and protracted discussion. The 8th and 11th sections of the act taken together furnish the chart of our proceedure. In the first named in the 8th, it is enacted That each, and every person claiming lands in California by virtue of any right or title, derived from the Spanish or Mexican Government, shall present the same to the said Commissioners, when sitting as a Board, together with such Documentory evidence and testimony of witnesses, as the said Claimant relies upon, in support of such claims; and it shall be the duty of the Commissioners when the case is ready for hearing, to proceed promptly to examine the same upon such evidence and the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and within thirty days after such decision is rendered, to certify the same with the reasons on which it is founded, to the District Attorney of the United States in and for the District in which such decision shall be rendered. This section declares fully the subject matter upon which we are to decide, that is the *validity* of any *right* or *title* derived from the source mentioned. It declares the evidence upon which alone that decision is to be rendered; being that introduced by the Claimant on the one side, and the United States on the other.

Having thus stated the subject matter and the evidence upon which we are to decide it, in the 11th section it proceeds with the same distinctness and precision, to declare the law by which we shall be governed. That section is in the following words: "That the Commissioners herein provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadeloupe Hidalgo, the law of nations, usages and customs of the Government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable." With respect to the subject matter of our action, and the evidence upon which that action is to be had, the line of our duty as prescribed in the 8th section of the act is palpable and easy to be pursued. But in the 11th section which declares the law which is to govern us, a broad field is open to our view, and each landmark demands the most particular regard. The treaty of Guadeloupe Hidalgo is the first in the order of enumeration. This treaty contained nothing more so far as it bears upon this case, than a recognition of the doctrine which is enforced in the second head, or the Law of Nations, vis: That in all cases of the acquisition of foreign territory by any nation, the private property of the former inhabitants shall be held

inviolate. The next enumerated ground of decision is the laws, usages and customs of the former Governments, from which the claim is derived. This embraces all the written laws which authorize and regulate the disposition of the public domains, as also all those laws which relate to the form, the construction and whatever else may effect the instruments of conveyance employed for that purpose; and to the conditions which are annexed, or which are authorized to be annexed to the grants in question. The customs and usages of the country as they may relate to the same subject, are also to govern us. There is no great difficulty in determining the nature and extent of the influence of those laws. Customs and usages upon the subjects to which we are to apply them; but I have felt more difficulty on the question how far we are to notice them judicially, without their being brought before us like foreign laws duly authenticated, or established by the evidence appropriate to their respective natures. The correct adjustment of this question is of great importance to the parties in the causes submitted to this Board, and I feel bound to advert to it as it has created some difficulty in my mind in the consideration of the points arising in them. With regard to the unwritten customs and usages to which are imparted by the act constituting this Board the force and effect of written law, their establishment as it seems to me requiring the application of the rules governing the proof of other facts. Those whose rights are to be materially affected by them ought to have the opportunity of examining the sources from which they are derived, or the witnesses who communicate them, and be allowed to show by other witnesses, that such is not the custom or usage or even to discredit the witnesses who testify to them.

The difficulty which I feel on this subject is not removed by the recent decision of the Supreme Court of the United States reported in 11th Howard, 668, United States *vs.* Turner &Co. The Court was not called upon to do so, nor do I think they did decide this question in that case. It seems that the Counsel for the Appellees moved for an issue to be tried by the jury, whether the grant in question was perfect and complete or not, by the laws of Spain in force in the province of Louisiana when it was made. The Supreme Court decide that there was no error in the refusal of the Court below to grant that motion, and proceedto say "The Spanish Laws which formerly prevailed in Louisiana and upon which the titles to land in that state depends must be judicially noticed and expounded by the Court, like laws affecting title to real property in any other State. They are questions of law, and not questions of fact, and are always so regarded and treated in the Courts of Louisiana, and it can never be maintained in the Courts of the United States that the laws of any State in this Union are to be treated as the laws of a foreign nation, and ascertained and determined as a matter of fact by a jury, upon the testimony of witnesses and of the Spanish laws prevailing in Louisiana before the Cession to the United States were to be regarded as foreign laws, which the Courts could not judicially notice, the titles to lands

in that State would become unstable and insecure, and their validity or invalidity would in many instances depend upon the varying opinions of witnesses, and the fluctuating verdicts of juries deciding upon questions of law, which they could not from the nature of their pursuits and studies, be supposed to comprehend." Now if all that was intended by the Court was, that the construction, the ascertainment and determination of the force and effect of a foreign law, were not matters proper to be referred to the decision of a jury, and the proof of such law was not for them, but for the Court, then the decision would be in accordance with the settled doctrine, Couseque *vs.* Willing; Peters, C. C. Rep'ts 225. So also if the Court intended to decide that the Courts of the United States would notice judicially the laws of a State, and that the laws in question were to be regarded as the laws of Louisiana by virtue of their recognition as such by the judicial tribunals of the State, the particular point now mooted not be embraced in the decision; for in the absence of any means by the publications of the decisions of the tribunals of California, I do not know what those decisions are. But if the Supreme Court in the case in 11 Howard above cited is to be considered as deciding that because the laws of Spain once existed in Louisiana and continued to control, and were to constitute part of the titles which were made under them, to many citizens then subjects of Spain, but now of Louisiana, they were on that account, now to be regarded as the laws of Louisiana, and not as foreign laws, then it seems to me that the decision is not in accordance with, but contrary to the prior determination of the Court expressly made, that I do not think it would have been overruled without making the slightest allusion to it. In the case of the United States and Wiggins, reported in 14 Peters 345, brought up from Florida and deciding under an act of Congress requiring, as the Article 3d, March, 1851, does, the claims to be adjudged and determined among other things by the laws, usages and customs of the former Government, the opinion of the Court contains the strong language which I quote. Much evidence was introduced to prove the practice and rules in use in the offices of the Spanish Government from which titles to lands issued, we think the evidence was admissable; the existence of a foreign law, especially when unwritten, is a fact to be proved as any other fact, by approximate evidence. The Spanish province of Florida was foreign to this Country in 1815, when the transaction referred to purports to have taken place. The practice of the Government in disposing of the public domain may be proved by those familiar with the customs, and there is in the record very satisfactory proof by witnesses of the laws and customs governing the Provincial Authorities, &c. If the Court in this case had merely declared that such evidence was admissable, and that the admission of such proof, even to establish a matter of law which would be judicially noticed without such proof, was not ground of error, being only superrogatory, doing no injury, but perhaps affording facility to the Court in coming to the accurate

knowledge of it, then nothing could be deduced from the decision material to the question but the language is strong and emphatic in the declaration of a positive rule of law upon the subject. It may be that the decision in the 11th of Howard goes to the extent of settling this question against the view taken in 14 Peters, though I am inclined to the opinion that it was founded (so far as it goes beyond the overruling the allegation of error in the Court below for refusing to submit the question to a jury) upon the fact that in Louisiana the former laws of the country were continued in force after the change of Government, whereas in Florida as in California, the English Common Law is adapted by the Legislature as the fundamental rule of jurisprudence. It cannot fail to be observed that the remarks made by the Chief Justice in delivering the opinion in 11th Howard as to the consequences of a different course from that pursued by the Court below, have no application unless they relate to the determination of the force and effect and construction of those laws by jury, instead of by the Court; because whether they are noticed judicially, or introduced and proved to the Court, the result would be the same as to the stability and security of titles, for in either case, the Court and not the jury would ascertain and expound them, and the same stability and security be attained, in the one case as in the other.

The next legal ground to govern us in our decisions is the principles of equity. What meaning is to be attached to the terms "principles of equity?" Whenever they occur in any act of the Congress of the United States, I apprehend admits of no doubt. They are those principles which form that venerable fabric known to the American people as the System of Equity Jurisprudence. It is a monument whose chief corner-stone was laid by Lord Hardwick, but whose superstructure has been judicially erected by the co-operation of the brightest intellects and purest characters who have ever adorned the ermine. Many of its proudest contributons have been furnished by illustrious citizens of our own country, who have left their works behind them. In this department of human excellence, the tribute of gratitude should always be paid to the name of Marshall and Kent and Story. It will be our humble duty to make the applications of those principles to the cases as they arise; taking care in doing so, not to forget that Equity, illustrious as she is, is still but a handmaid to the Law, and one of her cardinal maxims is *Equitas Sequitur Legem.*

The last ground of law enumerated in the section of the act mentioned to govern us in determining on the validity of claims is the decisions of the Supreme Court of the United States, so far as applicable. In entering upon the consideration of this ground of adjudication, I will remark that the opinions of that honored tribunal ought to command the respect of all inferred jur sdictions, and is not only that general obedience enjoined upon us, but especial reference is had to that body of learning which has, through years of patient investigation, been amassing in their reports upon the various questions of public law and private rights arising under the treaties by which we acquire foreign

territory, and upon acts of Congress passed in reference to them, and especially to those decisions which have been made upon lands passed after, and with reference to the treaties of *Paris* and *Washington*, by which we acquired Louisiana and Florida.

To determine the applicability of these decisions to questions arising under the Treaty of Gaudeloupe Hidalgo by which we acquired California, and the act of the 3d of March, 1851, it is proper to compare those Treaties and laws with this last Treaty and act of Congress. The Stipulations of those Treaties so far as involved in this matter, I will briefly state: In the 2d article of the Treaty of Paris, the terms of cession of public domain are as follows: "The Islands belonging to Louisiana, all public lots and squares, vacant lands, &c., which are not private property," excluding by the strongest implication, a cession to the United States *of any private property*. In the 3d article after the stipulation to incorporate the inhabitants in the Union, with the enjoyment of all the rights, advantages, and immunities of citizens of the United States, it concludes with the words, "And in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess. By the Treaty of Washington, in the 2d article as in the Treaty with France, a cession is made of all Islands, vacant lands, &c., which are not *private property*, and a special article is introduced, being the 8th, that all grants of Land made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities in the said Territories, ceded by his Majesty to the United States, shall be ratified, or, (as now understood) stand ratified, and conformed to the person in possession, &c., to the same extent, the same grants would be valid if the Territories had remained under the dominion of his Catholic Majesty. By the Treaty of Guadelupe Hidalgo, the right of private property of the former inhabitants is protected, at least as far as the laws of nations would have protected it, withont any provisions in the treaty. The stipulation of the 9th article, which is the only one applicable to the case of persons occupying the attitude of the claimant in this case, has been interpreted to mean a stipulation of maintainance and protection in their property as well after the admission of the State into the Union as before. The acts of Congress passed with reference to the land acquired under those Treaties, and which have been the subject of judicial construction in the cases especially referred to, in the act of the 3d of March, 1851, as being one of the governing rules of our decisions, are, first: The act of the 26th of May, 1824, entitled "An Act enabling the Claimants to Lands within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their Claims," by which the Courts were opened to decide on claims, under the Treaty of Paris, of 1803, of a certain class which were not perfect, but which might have been perfected into a complete title, under and in conformity to the laws, usages, and customs of the Government under which the same originated, had not the sovereignty of

the country been transformed to the United States. Second: An act of the 23d of May, 1828, extending with some modifications, unnecessary here to mention, the act of the 26th of May, 1824, over Florida, and, third: the act of June the 17th, 1844, extending over Arkansas, Missouri, Louisiana, and those parts of Mississippi and Perdido rivers. By the provisions of these laws any grant, concession, warrant, or order of survey legally made, granted, or issued, and which might have been perfected into a complete title but for the change of sovereignty, under and in conformity to the laws, usages, and customs of the Government under which they originated, could be presented to the United States District Court, &c. The Treaty of Gaudeloupe Hidalgo and the laws of Nations must be conceded to impart the same sanctity to private property in California, as it conferred upon it by the Treaty either of Washington or of Paris. The act of the 3d of March, 1851, authorizes the presentment before the Board of any right or title derived from the Spanish or Mexican Government. It is necessary before we are authorized to adopt any decision of the Supreme Court of the United States relating to the validity of titles, to see to their applicability. What is there in the acts above reverted to which gives a more enlarged scope of adjudications under them, than is given under the act of the 3d of March, 1851? The terms, any grant, concession, warrant, or order of survey are not more comprehensive, if as much so, as those adopted in this act under which we are now acting, viz: any right or title. If no property of any kind were conferred by the laws, usages, and customs, in the case of grants, concessions, warrants, or orders of survey, neither the Treaties nor the Law of Nations would require them to be regarded. Nor does Congress, by her acts, profess that she would be authorized to maintain and protect any thing less than an inception or imperfect right. Those terms, then, in those different acts, are of equivalent signification. In 11th Howard, 580, the Court say: "The word title in our Statutes, on this subject expressly means equitable rights, short of complete grants and perfect titles. It means equity, emphatically. In the act of the 3d of March. 1851, it means that much beyond all doubt; and not being qualified by the controlling terms, which those acts contain, it means more than mere equity, that is, *full and perfect titles*. also, the want of applicability of the decisions of the Supreme Court of the United States to questions arising before this Board, cannot be founded in any difference in the cases arising from the laws of Nations, the Treaties or the acts of Congress under which they were made. All those concur in one point which is, that all property of the former inhabitants shall be maintained and protected to the extent that it existed under the former Governments. It is true as was to be expected in a new field of legislation, that there was in some instances inconsiderable, not to say harsh and oppressive legislation, but its general tenor, whilst it sustained the rights of the nation, has preserved good faith towards the former inhabitants of the acquired country. In the general, there

3452

has been a magnanimous liberality extended both as it regards political privileges, and the property of those who were thus about to become adopted children of our great Republic. The conditions of the natives of the California, was one peculiarly calculated to demand not only the best faith *optima fides*, but the sympathy and fostering care of the new Government. They were first conquered and then transferred in violation of their feelings, of their prejudices, of their native habitudes, from a Government whose pressure they had now felt, under which they at least enjoying the homes of their birth. They were driven into stranger hands, of whose laws, of whose language, and of whose disposition towards them, they were wholly ignorant. Trembling with anxiety at their new position and looking forward with fearfull apprehension for farther changes and chances in their fortunes. Not unmindful of the obligations of humanity and of the law of Nations, which has been ever respected as the common arbiter by all civilized communities, the course of the Congress of the United States, commencing with the Legislation on the subject of the Territory embraced by the cession of the State of Georgia to the United States, in 1802, down to the acquisition of this country, has been marked by a spirit of progressive liberality and relaxation in favor of the claimants or grantees of land under their former Governments. This favorable consideration of all *bona fide* claimants manifests itself, by embracing in subsequent acts descriptions of claims not recognized by former acts, by extending the time within which notices of claims and the production of evidence were required, by giving authority to the Judicial tribunals and Board of Commissioners, not only to decide upon such claims, but to revise and confirm such as had been rejected. Nor is this last act of the 3d of March, 1851, under which we are now sitting, an exception to this general rule of liberal legislation. It expressly recognizes in the broadest terms any *right or title*, which terms I have shown are at least as comprehensive as those used in any former act. Nothing more could be done than this, except to say, that Claimants should be confined in their *Claims* without *any right or title*. To have exercised more liberality on this head would have been what neither the Law of Nations nor the treaty required and what justice to the people of the United States at large would have utterly forbidden. Neither the Law of Nations nor the Treaty of Guadeloupe Hidalgo (which last, indeed, is exceedingly meagre on the subject of the property of those who should remain in the country, and became American citizens), can act like alchemy and convert everything even a permissive occupancy, into a full, perfect and complete title in fee simple. Whatever *scintilla* of title there was under the former Government, is to be protected and maintained. But it is necessary that the right should be made known, and not rest upon the *ipse dixit* of the Claimant, some mode must be adopted to ascertain what is to be protected and maintained; and to my mind that which the act of the 3d of March, 1851, provides, is an easy and simple and equal way of ascertaining the existence of any right or title; the ascertainment of

which was of much more pressing importance to the former inhabitant as every day's experience demonstrates than to the Government of the United States. Having taken this cursory view of former treaties and laws, and compared them with that of Guadaloupe Hidalgo and the act of the 3d of March, 1851, with the view of deciding upon the applicability of the decisions of the Supreme Court of the U. S. to the claims before this Board, I will here state generally the two great leading principles resulting from those decisions; being the particular points established in them, to be applied to the several propositions or questions, as they may come under consideration, in the farther view of the case. The first of those great leading principles was announced by the Court as early as the year 1836, in the case of Smith *vs.* the United States, 10 Peters 330, 331, and is re-affirmed in 11 Howard 88. In the last case, the Court say in reference to this principle "This was the rule laid down for our Government in 1836, in the case of Smith *vs.* the United States, 10 Peters 330, 331, and which has been uniformly followed since." As the language of the Court introductory of the rule as well as in laying down the rule itself, varies slightly, I will quote it as it is laid down in both instances. In 10th Peters it is thus: "In every case arising under the law, one general question was presented for the consideration of the Court whether in the given case, a Court of Equity could, according to its rules, and the laws of Spain consider the conscience of the king so affected by his own or the acts of the lawful authorities of the Province, that he had become a trustee for the Claimant, and held the Land Claim by an equity upon it, amounting to a severance of so much from his domain," &c. In 11 Howard 88, it is laid down in the following words: "By the act of 1824 we are required to exercise the power of a Court of Equity and to adjudge to the given case whether a Court of Equity could according to the rules and laws of Spain, consider the conscience of the king so affected by the acts of his lawful authorities in the Province, that he became a Trustee for the Claimant, and held the land claimed, by an equity upon it amounting to a severance *of so much* from the public domain, before and at the time the country was ceded to the United States." The *second general rule* is, that which is adapted by the Court in many cases, as in 5th Wheat 359, 4th Con. Rep'ts 681, 3d Peters 92, 15th Peters 215, and which although not in the *least departed from*, may have the supplemental addition contained in 11th Howard 127. I will give the general rule as laid down in 15th Peters 225 in the words of the Court "We apply to the case the laws and ordinances of the Government, and in which the Claim originated; and that rule which is of universal application in the construction of grants which is essential to their validity, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind, or be capable of being ascertained by extraneous testimony." The supplement to which I referred above, is furnished in 11th Howard 127, in which case the concession being wholly indefinite in itself, needed if sustained at all, something more to constitute such

a severance from the public domain as is always required. Those additional requisites are said to be *supplied* either by actual survey, or by some ascertained limits, or mode of separation recognized by a competent authority.

Having stated with as much brevity as was consistent with perspicuity, the grounds upon which the Board is required to act, both as to the *evidence* and the *law* in deciding on the validity of the claims, I will now proceed to consider whether on the view of those principles, the claim of the present claimant is valid or not. It is founded upon a grant bearing date on the 1st of April, 1836, signed by Nicholas Gutierrez as Political Chief or Governor at the time of the Territory of Upper California. There is no question of the genuineness of the grant, whatever may be its legal effect, nor of the fact that Guterrez was the Political Chief, or acting Governor at the time. The evidence on file, from the Public Archives, proves all those facts. Whatever Royal Decrees of the Spanish Monarchy of the Spanish Cortes, of the Empire of Mexico, under the domination of Iturbide, under the name and style of Augustine the 1st, or of the Mexican Republic, may have been in force prior to the 18th of August, 1824, *there* is *no doubt* that at the date of this grant, the Decree of the Mexican Republic of the last mentioned date and the ordinance of the 21st of November, 1828, issued by the Federal Executive of the Republic, in pursuance of the 16th article of the said Decree of the 18th of August, 1824, were in full force: that the grant in this case was made with especial reference to that Decree and Ordinance; and just as little doubt that it rests on that Decree and Ordinance for its only *support*. Other decrees concerning the disposition of the public domain, and the settlement or colonization of this country, we know existed, prior to this last named Decree and Ordinance, and so far as they have not been expressly repealed, by subsequent legislation, only necessary implication, from their total incongruity or conflict with those, they certainly still remain in force. However, this Decree and Ordinance, as to *rural grants*, like the one now under consideration cover the whole subject so completely, as to leave little else, for any prior decrees to operate upon: their chief efficacy consisting in the light which they afford in the construction of that *Decree* and *Ordinance*.

As constant reference must necessarily be made to the decree and ordinance under which this grant was executed to decide on its validity; for greater convenience and out of abundant caution in view of their *once having been foreign Laws*, however they may now be regarded, that have been introduced into the record by the Law Agent of the United States, duly authenticated from the Archives in the legal custody of the Surveyor General of California, and constitute a part of the evidence in this case. This Decree of the Mexican Congress was a General Law upon the subject of *Colonization*, which professed as its chief *end* and *aim*, the settlement (cultivation or inhabitancy) of the vast public domain of the nation by means of Grants in full property to her *own Citizens* and *Foreigners*, provided they should

submit themselves to the Laws of the Country. The second section of that law provides, "Those lands of the Nation are the object of this Law, which being neither the property of any individual, nor belonging to any Corporation or Town, may be colonized. The third section declares, "For this purpose, the (Congress) Legislatures of the States shall form, with the greatest dispatch, laws or rules of Colonization, within their respective demarcations, conforming themselves in all respects to the Constitution Act, the General Constitution, and the rules established in this Law." The fourth section is in these words, "The lands comprehended within twenty leagues bordering upon any foreign nation, or within ten leagues of the sea coast, (diez littorales) shall not be colonized without the previous approbation of the Supreme General Executive Power." The sixteenth section of the Decree is in these words, "The executive, in conformity with the principles established in this decree, shall proceed to the colonization of the Territories of the Republic. This decree was enacted, as stated above, on the 18th of August, 1824, after the establishment of the Acta Constutiva de la Federacion, which was of the 31st of January, 1824, and before the establishment of the Constitution Federal de los Estados Unidos Mexicanos, the formation of which, however, was clearly in the mind of the Congress at the passage of this Decree. The Executive did not proceed to the colonization of the Territories of the Republic until the 21st of November, 1828, when he promulgated his general rules or ordinance for that purpose. Independently of the direction contained in the 16th section of the decree of the 18th of August, 1824; by the 15th article of the *Acta Constitution*, he was required to make decrees or orders for the better execution of the Constitution and General Laws." And also by the *second article* of the 4th Title of the Federal Constitution of the Mexican United States, it was his duty to make ordinances, decrees, and rules, for the more exact fulfilment of the Constitution, the Acta Constitutiva, and General Decrees. He prefaces his ordinance of the 21st of November, 1828, with the following preamble, "It being provided in the 16th article of the General Decree of Colonization of the 18th of August, 1824, that the executive, in conformity with the principles established in said decree, proceed to the Colonization of the Territories of the Republic; and it being most proper, in order to give to the said *article* the most *adequate* and exact fulfilment, to dictate some general rules, that its execution may be expedited in the cases that may be occuring. The E. S. President has thought proper to determine on the following articles, the first article in that ordinance is in the following words, "Authority is given to the Political Chiefs, that in conformity with the Decree of the General Congress of the 18th of August, 1824, and under the conditions herein expressed, they may grant vacant lands of their respective Territories, to empressarios, families, to individual persons, whether Mexicans or foreigners, who wish it to *cultivate* or inhabit them." The last article of this ordinance relates to missions, and is as follows, "In the Territories in which there are missions, the lands which *they occupy*

cannot be colonized at present, and until it be determined if they ought to be considered as the property of the establishments (reduciones) of Neophytes, Catechumens, and Mexican settlers. To disembarrass this case from any consideration of the objection on the score of this last article, I will observe here, that the Record contains a disclaimer of any right on the part of the mission, and the proof is, that the land solicited and granted, was not occupied by the mission.

This statement of the Decree of the 18th August, 1824, and ordinance of the 21st November, 1828, will suffice to give a general outline of the scheme or plan of granting the Mexican Domain, under which the claimant derives his title, as other articles of them may require to be considered, in the progress of this opinion they will be introduced into it.

The first question which presents itself at the threshhold of our inquiry into the validity of the title of the claimants, is that which grows out of the *Fourth Section* of the Decree of the 18th August, 1824, and will be called for convenience of expression, the *Lettoral League Question*. The discussion of this question (on the solution of which depends such vital interests) by the course in this case, by the Law Agent of the United States, and by other gentlemen of Law, who have submitted cases now in our hands for decision, has been marked by that diligence of investigation, legal acumen, and forensic ability, which was demanded by the subject, and fully met in its argument.

Before entering upon the consideration of this first point, I will suggest that it is by no means clear to my mind that the land claimed in this case lies within the *ten* league *littoral*. There does not appear in the evidence (indeed, the contrary is conceded on all hands) that there ever was any line marked out by the Mexican Government that would indicate the region of country embraced within them; it would be very difficult to ascertain with any precision by means of an actual measurement, the tract of such a line along the coast of California; and having never in any manner been ascertained, I suppose it will be conceded without controversy that we cannot judicially know it, except in those cases where the coast is one of calls in the Grant. The evidence in the cause of the witnesses, is such as we might expect from the nature of the thing, exceedingly unsatisfactory. The Law Agent of the United States relies upon a document accompanying the Espediente as found in the Archives, being the return of the Ayuntamiento of the city of Monterey, to whom was referred by the Political Chief, the question of the fitness of the grant to the petitioner, which return states that the land is within the ten littoral leagues. The grant was made by the Governor, *notwithstanding*; but it is very apparent that his grant was no evidence that the return was *entered*, for the fact, where self-evident, presented no obstacle to a grant, as the evidence shows, particularly the document in evidence from the Archives containing the proposition of Jimeno, and the proceedings had upon it in the Departmental Junta, in 1840. It may be that the inquisition of the Ayuntamiento of Monterey may bind the claimant

as *res adjudicata*, though I do not think so, yet as that impression may be erroneous, and the question has been treated as though it might arise, and has been fully argued, I will proceed to give my opinion upon it.

The solution of this question requires that we should examine narrowly both the decree of the 18th of August, 1824, and also the ordinance of the 21st November, 1828, which are in fact necessarily connected, the latter merely educing for practice all that was involved in the former, which was its only legitimate office. It has been contended by the counsel for the claimant in this case, that whatever else might have been the object, or motive of the Fourth section of the Decree of 1824, it was not intended to embrace a native Mexican citizen, of which class is the claimant now before the Board. In support of this proposition a general review was made of the course pursued by the former Government of the country, in regard to the discrimination always made in favor of her native citizens, in granting of the public domain, and in the colonization of her provinces. It is very apparent from this examination, that the policy of the former Government of the country in this regard, and has been varied at different periods, and conjunctions of her affairs, sometimes exhibiting the exclusive rigor of Lacædemonia in the days of Lycurgus, or of the Celestial Empire, and others, relaxing it so far as almost to abolish all distinction. There does not seem to me to have been, at least since the independence of Mexico, any such fixed and settled policy in this matter, as to rely upon it, with any confidence, as a guide in the interpretation of this Decree. It is safer to determine her policy from Laws enacted at the given time, than to construe her Laws by any supposed general policy upon the subject: an impression might indeed be taken up, from the first section of the Decree, that the only object of the bounty of the Government was *foreigners*, that they were the chief instruments intended to be used in the colonization of the vacant lands of the Republic; this would be, however, a very erroneous deduction. In looking at the Decree itself, I can perceive no distinction between foreigners and Mexican citizens, except that which is suggested in the 9th section, wherein the distribution of lands, a preference is required to be given to Mexican citizens, which involves, I think, a distinction in their favour over the foreigners whose introduction was contemplated. Whatever doubt may exist as to the intention of the Legislature contained in the Decree, it all vanishes when we look at the provisions of the *Ordinance*, which is its practical exponent.

The first section of the Ordinance is a clear and comprehensive and authoritative exposition of *three prominent* and *essential matters*, necessary to the execution of the Decree, whose adequate fulfilment the President had just declared his intention to accomplish. The *first* in his order of announcement is that the sole and exclusive agent in the functions of granting shall be the Political Chief of the Territory. The second is, that the subjects of his grants are the *vacant lands of his Territory;* and the *Third* is, that those grants are to be made to

Empresarios, families, and individual persons, whether Mexicans or foreigners. Whatever was intended to be granted by the Decree, I feel bound to believe was, with the exception of the preference indicated in the ninth section of it, intended to be granted, indifferently, to Mexican citizens and to foreigners.

The next point which I shall consider, is whether the *Territories of the Republic* were intended to be embraced in the terms of the Fourth section of the Decree of 1824; its application to lands within the prescribed limits situated in the States, is evident; but that it was intended to embrace those similarly situated in the Territories, is not, I must confess, so free from doubt, though such is the inclination of my mind. With regard to the States without such a provision, all power to control the matter would have been parted with; but that consideration does not prove that the generality of the terms should be so restricted as to confine them to such lands within the States. This policy of the withdrawal of her people from contact with, and facility of access to Foreign Nations, the neglect of which might involve the nation in a general war by border feuds, and being so involved, might make her more vulnerable, and exposed to maritime incursions along her coasts, would seem to apply as well to her Territories as to the States. In speculating upon the policy and motives of this provision, it is possible that there might have entered into it one consideration which was peculiar to the Territories; the Congress may have supposed that in devoting the whole *vacant domain* by this permanent Decree to *gratuitous distribution*, she might cut off any aid to her future fiscal exigencies from the source of her public domain; and may have thought it wise and prudent to submit to her Executive head, the determination of the economical question, whether the highest interests of the Republic might not be best subserved by withholding that portion of it for the purpose of sale; but whatever may have operated on the mind of the Mexican Congress, I have come to the conclusion, not however with the fullest confidence, that they submitted to the will of their Executive the future subjection of that portion of their country, whether in the States or the Territories, to the process of colonization.

The next, and as it occurs to my mind, the most important branch of this question is whether the Federal Executive has *exercised the power* with which he was invested by Congress in that section of the Decree. It is certain that the mode in which he shall give his approbation, is not prescribed by the Law, and I am not prepared to say, that any mode, which he might choose to adapt, however, it might differ from my own view of its comparative efficacy, in accomplishing the end designed, would not be competent to him to select. In view however of the *mode* in which he was required both by the Acta Constitutiva and the General Constitution, when carrying out a general Law of the Republic. I should think that the one he pursued, would be the one most natural for him to adopt on this occasion, I have already had occasion to state that both by the Acta Constitutiva

and by the Federal Constitution, it was his duty to make Ordinances, Decrees and Rules, for the more exact fulfilment of the General Laws of the Republic. It seems to me that the Federal Executive might well have executed the trust reposed in him, by the Constitutional Congress of 1824, by a General Ordinance.

The matter confided to him *was to determine;* whether the region of the public domain contained within the described limits, should be *subjected* to *Colonization.* That determination which had been doubtless confided to him by Congress, from the consideration of high Official station and responsibility to the Republic, could not be by him, devolved upon another. The power and authority conferred upon him, was a *high public trust* which he could not delegate. But in relation to the process of carrying it into execution, by establishing the details of Colonization, it was his peculiar duty; and it was just as competent to him to do that in relation to the lands which were devoted by his will to Colonization, as to perform the same functions in relation to those so dedicated by the will of Congress as expressed in their decree of 1824, the vice in the argument adverse to this consists as it seems to me, in confounding the act of the will of the Federal Executive, by which he could subject that region to *settlement* with the means which he should employ to carry that will into execution. The objection to the mode of carrying out his purpose of settlement, after that purpose had been formed, is more properly a criticism upon the fitness of the *means* which he adopted, than an argument against his power to communicate his will, by a general ordinance. We may, in reviewing the transaction, suppose that the policy which dictated his investment with that power, would have been better subserved, if he had exercised it as that every individual before he could be permitted to settle within that tract of country, should present himself personally to the Executive and obtain a special permission. But the Executive of Mexico may have thought, that all which the public interest required in 1828, could be achieved by a less onerous and less dilatory process. He may have thought the public security would be sufficiently guarded in the case of individual Mexicans or Foreigner by the ordeal through which he had required them to pass, from the first presentment of their petition to the Political Chief to the ultimate sanction of the Executive, which last he has provided in case of a reasonable objection to their pretensions, he may have thought that in case of an attempt to introduce through the medium of empresano stipulations and excessive proportion of foreigners, the check which he had provided of a personal application to himself before the issuance of an inevocable grant would sufficiently protect the interest of the Republic from such an inordinate influx, that the Federal Executive for aught than I see in the law of 1824, might have acted in that manner, thus subjecting that region to settlement by the promulgation of his will in a general proclamation, I feel well assured. A much more important question will now demand our consideration, and that is, admitting his competency to do so whether his ordinance of the

21st November, 1828, contained that expression of his will, the enquiry we will now proceed to make.

At the threshold of his entrance upon the duty of carrying into execution the general decree of August, 1824, the executive declares in the caption or heading of his ordinance what it is he is about to do; he entitles it general rules, or an ordinance for the colonization of the territories of the Republic. This is transmitted to California, and is found among the archives of the territory. Now, this is significant of one fact, that he proposed to extend the benefit of the decree to California; and yet it is true beyond controversy, that the object of the decree could not be effected in this Territory, which was settlement and cultivation, to some extent at least, by families, except within the ten littoral leagues. If this was the case in 1840, as the record verifies by reference to the statement of Ximeno, how much more was it in 1828? At that time, from the wild and savage nature of the interior infested by hordes of hostile Indians, it would have been next to impossible to have introduced cultivation or inhabitancy by families so far from free towns. The missionary stations, the settlements already established in the Territory, and from the protecting military presidios, all and every one of which, we learn were within that very belt of country which is now supposed to have been withheld from colonization. It seems to me that such could not have been the intention of the executive. The very first article of the ordinance as well as the last, seems to satisfy my mind that he did not intend to exclude it. The first article of the ordinance specifies the object of the proposed colonization to be the vacant lands of the Territory; and what they were, the decree which he professes to be putting into activity, had particularly defined, as those lands of the nation, which not being private property, nor belonging to any corporation or town, could be settled. The last article leads to the same conclusion. As to the intention of the President, that article declares that the land occupied by the Missions should not be colonized; this is a strong negative, pregnant of the affirmative declaration, that such of the lands as were pertinent or adjacent to the Missions, if not actually occupied by them, might be colonized, and as we have seen, within the ten leagues, not the most remote allusion from which an inference can be drawn to counteract the effect of this strong language. If he intended to withhold this section of the country from settlement which was known to rest in his exclusive will, he would not, I would think, have been even equivocal in his language, much less have used such as conveys a contrary intention; nor can we suppose that a matter which constituted so material a part of the decree which he was carrying out, and of the subject of his action, would have been forgotten by him, and if not forgotten, how easy and natural to have restrained the general authority, to grant by adding to the words "vacant lands in your territories," the words "except within the littoral and border leagues." He has not distinguished between the vacant lands which are within, and those which are without, the supposed lines which divide them; he has

used no terms indicating any intention to make any such distinction, and the rule of construction in the Spanish law is, "Ubi lex non distinguel necnos distinguere debernos." I repeat, then, that vacant lands in the ordinance must be understood without any words to distinguish them to signify the same thing *the same thing* that they do in the decree which it purports to carry out, and what they mean in that decree is declared in the second section to be all those which are not private property, &c. If, however, there be any doubt as to the true meaning of the ordinance, it vanishes when we look to those accompanying facts which are a legitimate ground of interpretation. The strongest evidence is found in the contemporaneous understanding and conduct of all concerned in the execution of the law and ordinance, of the intention to authorize the settlement to proceed within the littoral leagues. The political chiefs and Governors who were solicited and appointed as agents to carry out his ordinance by the executive and the Territorial deputations, and the departmental Juntas who were also to officiate in the execution of his instructions, with one accord have put the same construction upon this ordinance. One political chief or Governor might have erred in this matter through ignorance or from some improper motive, and so of one body of the deputation or the Junta, but that all should have done so through a long series of years and succession of terms, it is difficult to believe, and the evidence of this construction is heightened to the greatest degree of moral and legal certainty by the acquiescence of the executive, after we must presume he had knowledge of this construction of his regulations, and never intimating so far as we can learn, that there was any error in this uniform course of proceeding. His knowledge of all this is a fair presumption in law from the requirement of quarterly returns to be made to him of all the grants that were made, and the facts relating to them. It is not often we find such a body of contemporaneous expositions of a doubtful law. To countervail the construction of the ordinance of 1828, as deduced from the contemporaneous and continued acts of the officers of the Government in the Territory, to whom its execution was expressly confided by the federal executive, and, indeed, to establish by the same kind of evidence the opposite construction. The law agent of the United States has introduced from the archives, a record of proceedings had before the Departmental Junta, on the 18th April, 1840, consisting of a proposition submitted to that body, a report of a committee upon it, and their adoption of that report; the object of the proceeding seems to be to procure the confirmation by the General Government of the grants of land within the ten leagues, and of mission property made by the Political Chiefs, and approved by the successive deputations and juntas down to that time, under the law of 18th August, 1824, and the ordinance of 1828. This whole proceeding conduces to prove that there was in the minds of that body at that time, to say the least of it, great doubt and anxiety on this subject. It is fair to presume that such was the state of their minds at the time, as

there is no grounds to believe that anything but honest apprehensions of the uncertainty of the land title of the territory insured their action. But at the same time that it discloses this doubt and feeling of insecurity, it also supplies other facts, which outweigh as evidence of the construction of this decree and ordinance. The proceedings themselves thus furnish full proof of the facts that the Political Chiefs, from the commencement of their action under that decree, and ordinance in 1834 down to that time, had granted lands by definitive titles within the litteral leagues, and that Territorial Deputations and departmental juntas had approved of such during the whole of the same period. It proves further, that there were no vacant lands except such as were so situated which could have been colonized. Because the said record declares it in all littoral, and the greatest part thereof is acknowledged as belonging to the missions. Now the reputed acts of Political Chiefs or Governors, and of the deputations and Juntas in the execution of their duty, under this decree and ordinance in the scale of evidence, greatly preponderates this single act of that body, even if their resolutions and preamble had contained the express averment that they did not consider the decree and ordinance as furnishing any authority to make the grant alluded to. But I do not understand them as expressly declaiming that belief, but they are rather augmentative and deprecatory of the evils of such construction. Furthermore, if what is produced as the answer of the General Government to their resolutions, is in fact a response to them (which, however, I can hardly consider as having any connection with them,) it proves one of two things, either that the executive of Mexico did not perceive any reason for the apprehensions of the Departmental Junta, or that they were supremely indifferent to the feelings and prosperity of the people of California, and the latter we are not justified in imparting to them. The views and considerations above suggested, relate to the construction proper to be placed upon the decree and ordinance, by virtue of which this grant was made. If I should be wrong in the conclusion to which my mind has arrived, that the decree and ordinance ought now to receive the construction which was put upon them at the time, by all concerned in the subject to which they related, and which was acquiesed in so long by the former government, it is worthy of consideration whether, 1st, that approbation of the Federal Executive may not be presumed to have been given, and 2d, whether, even if there were no such approbation or previous consent either in fact or presumption of law the principles of equity under all the circumstances of this case do not require that the claim should now be confirmed, as the first of these propositions is founded upon the supposition that the Executive of Mexico could by a less public but equally competent and effectual mode of communication, have imparted the authority to the Political Chief, that is by private instructions which the Political Chief was not bound to expose, it may not be amiss to bestow some further reflection upon his competency to communicate his consent in that manner. In the agreement of the law agent of the United States, the total invalidity

of any private instructions is asserted and a position assumed that even a public antecedent *proclamation* by the federal Executive would not suffice but that there must be a direct application for that consent in every particular instance of Grant. To sustain this doctrine we were referred to the decisions of the Supreme Court of the State of Texas in the 3d volume of the Reports of that State. From the fact that the State of Texas composed a part of the Republic of Mexico and that her judicial tribunals have had their minds necessarily turned to the questions arising out of the decree of the 18th of August 1824, much consideration is due to them judicial decisions upon that subject. At the time of the enactment of that decree Coachuilla and Texas together formed a state of the Republic; in obedience to the 3d section of that decree, that State proceeded to the enactment of a law on the 21st of March 1825, providing for Colonization within her demarcation. By the 7th article of that law she provided that no settlements should be made within the treaty border leagues nor within the ten littoral leagues on the Gulf of Mexico except they be such as were previously approved by the Federal Executive of Mexico, and for that purpose all future petitions on the subjects whether made by Mexicans or Foreigners shall be passed to the Supreme Government accompanied with the corresponding Report. In the year 1827 that state by explicit instructions to her commissioners of Colonization forbade them to give possession to any Colonist purposing to establish himself within the twenty border or the ten littoral leagues unless he shall present him with a special order from the state Government wherein the approbation thereof of the National Government shall be manifested. The result of this state of Legislation is a palpable requirement that the grantee in each case must produce a document containing the previous approbation of the Federal Executive. In that State beyond all doubt every grant would be void when the consent was not obtained as the law directed it and could not be recognized unless proved by the evidence which the law required. Then the consent must be special in every case and no presumption of that consent could be indulged to supply what the law had required to be procured and exhibited. The judiciary could not dispense with those legal requirements and hence the decisions in the Supreme Court of Texas upon those law points, viz. The special application to the Federal Executive in case of a grant and upon the doctrine of presumption of that assent by the Executive of Mexico. There was no especial action required of the Federal Executive with regard to Colonization in the States as there was in regard to Colonization to the Territories, by the 16th section of the decree. The course to be pursued by the States was to be one of their own adoption. The Federal Executive could prescribe no rules for the States as to the mode of carrying out that decree. The States of Coahuilla and Texas adopted the mode of obtaining approbation of the Federal Executive to Colonization within the leagues by special application in every instance. If Coahuilla and Texas instead of prescribing that mode of proceeding, had by a resolution of her Legislature

requested the Executive of Mexico to give his approbation to the settlement of that portion of the State contained within the border and littoral leagues in the same manner that she should adopt for the Colonization of the residue of her demarcation, I cannot doubt but that it would have been entirely competent to the Executive to have complied with the request whether he did so or not, and that a general ordinance if he had complied would have been all sufficient to have given the authority or the meaning of the Fourth section of the Decree of 1824. I presume it will be admitted that the National Legislature could have at any time repealed the Fourth section of the Decree of 1824, if they had done so and instead of subjecting Colonization of this portion of the country to the will of the Executive they had provided that it should not be colonized without the previous consent of that department of the Government, I presume that then it would be doubtless competent to Congress by a general resolution to that effect to have given such approbation. It seems to me that Congress by transferring their power in the matter to the Executive without any restraint upon him as to the manner of exercising it, gave him the right to exercise his best judgment as to the whole subject. Coahuilla and Texas never applied for any general authority or approbation but adopted the cause which to her seemed best, the question never arose in that State whether such mode of giving the previous approbation of the Federal Executive was within the meaning of the decree of 1854; nor are the decisions of that Court applicable to the questions upon which I will presently enter of the presumption of the previous approbation of the Federal Executive. No presumption could be indulged of any assent in Texas, because it was expressly provided by a statute that the evidence of that approbation should accompany the petition of the claimant, before he could obtain any right whatever; and one of the grounds upon which the presumption rests, if it can be indulged at all, did not exist in Texas, because the relation between the Federal Executive of Mexico and the authority of Coahuilla and Texas are by no means identical with that which exists between that Executive and the Public Chief of a Territory to whom that Executive has confided the general trust as his and the agent of the Government to convey or grant vacant lands lying within it. It must be conceded that the decree of 1824 required the previous approbation of the Federal Executive to colonization within the border and littoral leagues. It is equally true that the officer of Government cannot alienate the public domain of that Government without its authority. The question now to be considered is, admitting that such authority must exist, whether or not its existence in this instance may not be presumed. There cannot be any presumption indulged of the existence of an authority in a public officer to dispose of the public domain, where the public law regulates not only the manner of conducting the procedure, but also the authority and power of the officers. The case must be brought within the influence of the doctrine laid down by the Supreme Court of the United States in the case of Arredonda, Clark, Perchmam, and others,

all of which recognized the same principle. Those cases rest mainly upon the King of Spain to grant the public domain as may suit his royal will, and upon the presumption that those officers through whose agency he acts in that matter will from their dependence upon his favor, andthe f ar of punishment, not venture without authority to encroach upon the royal prerogative. The whole doctrine is expressed in the following words, taken from the decisions above referred to: "A grant made by a Governor, if authorized to grant lands in his Province, is *prima facie* evidence that his power was not exceeded. The connection between the Crown and the Governor justifies the presumption that he acts according to his orders. Should he disobey them, his hopes are blasted, and he exposes himself to punishment. His orders are known to himself and those from whom they proceed, but may not be known to the world; and further, he would controvert a grant executed by the lawful authorities with all the solemnities required by law, takes upon himself the burden of showing that the officer has transcended the power conferred upon him, or that the transaction is tainted with fraud. There concurs between the Federal Executive of Mexico and the Political Chief of the Territory, and that between the King of Spain and the Governor of a province, many points of resemblance so far as this particular matter is concerned, though they are not alike in all respects. The point on which they differ most is perhaps not the one in which the doctrine was mainly founded by the Supreme Court; and that is the utter dependence of the Governor for all his prospects in life to the favor of Government. These facts are common to them both, that during the existence of this decree in 1824, the deposition of the land granted depended upon the sole will of the Federal Executive, which was as free to act as that of the king or any of his royal domain. That the Political Chief of the Territory had the same general authority, and was the only officer (who did have it) to grant lands that existed in the Governor of the Kenza Province: that there was the same unrestrained mode of communication of the will of the Federal Executive as to the deposition of this land in question to the Political Chief, as existed between the king and his Governor. And it may be that the power of appointment or of removal from office of the Political Chief by the Federal Executive was unrestrained by the Mexican Constitution or the practice under it. His power seems to be extensive enough to have formed a strong motive to obey his orders and decrees. The 20th article of the 4th section of the Constitution confers a sufficiency of power to assimilate the relation perhaps nearly enough to authorize the application of the doctrine of presumption so far as it rests on that ground. The power conferred on the Federal Executive to carry out the decree of 18th August, 1824, by the 16th section thereof, and by his general power under the Constitution to make ordinances, decrees, and rules for the better fulfilment of the general laws of the Republic. His special unlimited power to subject the land within the border and littoral leagues to settlement by his will, with no law to regulate and

prescribe the manner of communicating that will or determination of it to the agent he might appoint and did appoint, viz: the Political Chief of the Territory and his power over that officer who had the sole granting power over the vacant land of the Territory in case of any departure from his orders as given in the Constitution cited above, all strongly incline my mind to the conclusion, that in case of a grant made by him, the presumption might well be indulged that he was authorized to make it. As it is not necessary, however, in my view of this case. to decide positively upon that question, I decline to do so. This conducts me in the course of inquiry which I proposed to the consideration of the last matter connected with this question of litteral leagues, and that is, whether in view of all the matters of fact, and of the Mexican Law, connected with it, as presented by the record, it would be consistent with the principle of equity to refuse a confirmation of this grant because of locality in reference to the coasts, the nature of the transactions between persons soliciting land and the Government is in effect as has been frequently said of the Supreme Court of the United States. a contract. The consideration being in the case now before us, the abandonment of his former home or residence, and the cultivation and inhabitancy of the land for which he petitioned, and whether, according to strict definition on our law, it be a technical contract or not, yet after the labor and toil bestowed upon it, and the long and continued residence preventing necessary the occupation, and maybe the opportunity of acquiring any other home, the doctrine governing contract may be very appropriately applied; viewing the claimant in this light, it seems to me that he may in this case work to his aid the principles of Equity. He desires to avail himself of the laws of his country to procure a home He reads that law, and sees clearly laid down the terms and conditions upon which government will grant.

That law contains a provision, that as to a portion of her public domain, although it is in all events, and absolutely withdrawn from settlement, yet it can only be devoted to that object by the previous consent or approbation of the Federal Executive of the Republic. He reads that the Federal Executive is required to carry out that law into practical effect. He is a native, perhaps, of California, born in the only inhabitable part of the country. After the passage of the decree of 1824, he waits with patience for the necessary ordinance or regulations of the Executive, at the end of about four years that ordinance is promulgated. He learns from that who is the officer appointed to grant the vacant lands of the Territory. He sees distinctly declared what he is required to do to obtain a portion of that vacant land. With an honest purpose of mind to comply with all that he is required to perform on this part, he approaches the Political Chief of the Territory, and submits his application. Among other things to be considered by the law, is the relative position of the land which he solicits, to the coast of the Pacific. The land he solicits is in that section of the country which alone has been redeemed from the savages, and

capable *and capable* of being used as the law requires. He knows that the land is grantable if the Federal Executive shall have willed it to be so. The Political Chief, with all this before him, and with information that the land is within the ten litteral leagues, proceeds to make the grant. Is not the grant by the Political Chief made under such circumstances, in effect an affirmative response to the question, has the approbation of the Federal Executive been given to the granting of this land? That question is asked by the petition, and is answered by the grant. I cannot think that this claimant is chargeable with any violation of the law. He must be considered in this case to have acted with good faith at least. The written laws and published ordinances of the Government he may be held bound to know, though the presumption is so far shut of the fact in this particular, that both law and equity allow an apology sometimes to be urged for not having made their acquaintance, however, in this case there was no violation of any written or public law, so far as I can perceive, the whole law seems to have been known to him so far as it was accessible to any one. The law of 1824, and the ordinance of 1828, he was bound to know, but there was a fact, the authority of a Political Chief to grant this land which he had no earthly means of knowing, except from the source to which it would be properly communicated, if it existed. He relies upon the information, takes his grants, proceeds as the ordinance directs him to the possession of the land; he hears no more about the matter of the littoral leagues. The Government that granted it to him never molested him. Nor do I think that she ever would have done so. She was fully advised of this mistake of her officer, if it was one. I suppose then, six months after it occurred, as there is a requirement for a special Report of the matter even three months after it transpired. A knowledge of this fact we may suppose, was at any rate communicated by the Departmental Junta of California of 1840, I cannot think that in good conscience the Government of Mexico would after so many years have driven him from his home for the want of the previous approbation of the Federal Executive. I feel authorized by the language of the rule laid down by the Supreme Court of the United States, in the case above cited in this opinion, to consider that the conscience of the former Government ought to be so affected by the conduct of herself and her officers as to hold the land (if she held it at all,) as a trustee for the claimant. This rule by which the Supreme Court touched the conduct of the King, was established under laws which furnished rather a demure light by which to hunt for it, than is given us by the act of the 3d of March, 1851. The old and familiar camp of the principles of equity, is not held out as it were to one side, but is put into our hands to guide and to govern us in the decisions of those cases. Having thus disposed of the littoral league question, and come to the conclusion that a confirmation ought not to be refused on that ground, I will pursue my inquiry into other matters affecting the validity of this claim. Shall the objections that have considered be insufficient to prevent such con-

firmation, yet, if according to the publicly promulgated law and ordinance prescribing the plan and scheme of disposing of the public domain of the Republic of Mexico, no right or title of any kind ever vested in the claimant, then there is no grounds for the application of any equitable considerations, such as the Supreme Courts of the United States have applied to cases of imperfect titles under former laws of Congress, which have been referred to; nor any ground upon which this Board upon any of the principles or grounds of decision enumerated in the 11th section of the act of March 3d, 1851, confirm this claim. The Law Agent of the United States contends that such is the condition of this claim when brought to the test, this makes it proper and necessary to proceed to the application of the claim, to the ordinance of November 1828. The agreement is that by the just construction of the ordinance, there was necessary to the existence of any right or title whatever in the petitioner, a previous consent of the Territorial Deputation and that as there is no evidence introduced into the case of any such previous consent, that there is no ground upon which the claim can be confirmed, the same process of reasoning may be pursued in the consideration of this question as was adopted in regard to the construction of the decree of 1824, as to the requirement of the previous approbation of the Federal Executive to the colonization of the lands within the littoral leagues, that is, we should endeavor first, to arrive at the meaning of the ordinance, by the provisions themselves which it contains, and if they are doubtful, then we may recur to the usage and practice which was adopted and pursued by all the officers of the Government, who were charged with the execution of the ordinance. In such a case it is a well settled maxim of the Spanish law, "Ortima lego inter pres est constitudo," and to this may be added as of great force in the construction, that the Government whose ordinance it was, was fully informed that such was the construction and practice of her officers in its execution, and that no objection was made or correction ever attempted of the supposed error, the proof in this case is abundant that the universal course of practice by all the Political Chiefs, whoever even granted lands in California to execute complete grants or titles to the petitioner, and to deliver them to the party, before the submission to the Territorial Deputations or Departmental Juntas for their approval, and if there are any exceptions to this rule, they are so rare, as that they only serve to prove the general rule. It is as also fully proved in this case, that the Government was well informed of this course of practice by all of her officers or Political Chiefs. My own impression is, that this practice was in conformity with the provisions of the ordinance in this respect, but there cannot be any doubt, I think, that whether the ordinance contemplated the execution of the full title by the Political Chief or not before he was required to obtain that approbation, or rather submit it to them for their *consentimente*, there was to be in existence a right or title, tho' an imperfect one, before the submission of matters to that body, which last would be sufficient to

authorize a confirmation according to the act of the 3d of March, 1851, if it were valid according to the tests applied to it by that law. In considering this question of the approval of the Territorial Deputation or Departmental Juntas, it must always be borne in mind, that the whole undivided dower, and authority to make grants, was vested by the ordinance in the Political Chiefs. There is no participation with him in that exercise of power with anybody else. "The Political Chiefs of the Territories are authorized to grant, &c.," all the perquesites to the exercise of that function by him are enumerated in the 3d article of the ordinance immediately after the presentation of the petition, as is required in the second article, he shall proceed directly to obtain the necessary information whether there is in the Petition, the requirements demanded by the law of 18th August, 1824, both as respects the petitioner and the land he solicits and for that he may rely on his own judgment and act upon it alone, or if he prefer to do so, he may consult at the same time, with the respective municipal authorities, as to whether there be any objection to the grant. "That in view of the whole, the Political Chief will accede or not to the prayer of the Petition, conforming his conduct exactly to the laws applicable to the matter, and especially to the above named of the 18th August, 1824." Then follows the section which more particularly refers to the point under consideration, it reads thus, The grants made to private individuals or to families shall not be held as definitively by me (or valid) without the previous consent of the Territorial Deputation to which there shall be passed to it the respective Expedientes, as we have seen that no share of the function of granting is devolved by the Ordinance upon the Deputation, their consent must necessarily be to what has been done in that particular, that he shall have done something in the contemplation of this section towards the grant, must necessarily be conceded even though it should not have amounted to the execution of a perfect title, that he should have acceeded to the Petition which was for a grant of the land sought, is expressly required, and that there was at least a concession to that extent, is a necessary deduction. To limit the word concession to that point in his action would result in the same end, for there would then be an inceptive title, whose effect would only be qualified but not defeated by their refusal, and that qualification was only to detain it in the condition it then was, until the final action of the Federal Executive, to say that what the Political Chief had done should not be definitively valid, without the approbation of the deputation is the admission of validity, though it may be short of irrevocability and in that construction there would be an imperfect right or title which, if never destroyed under the former Government might now if in all other respects unexceptionable be the subject of confirmation by the Board. But my impression is, that after the necessary qualifications were ascertained by the granting power to exist on the lands sought, and the petitioner that he might under the Ordinance, proceed to the making, signing, and delivering

the title. The 8th article proceeds "The Concession" which is asked for being definitively made, there should be executed a document signed by the Political Chief which shall serve as a title to the party expressing on it that it shall be understood to be in conformity with the provisions of the laws, in virtue of which he may proceed to the possession, this definitive action of the Political Chief in consumation of the Title refers to initiatory steps, which by the preceding or 3d article, he had been required to take in the same matter, and it was not, as I think, by any fair construction refer to any thing else, that Concession which is the only document he is ever supposed or required to make, was the same which was not held to be definitively valid without the previous consent of the Territorial Deputation, all the force must be given to the provision requiring the previous consent of the Deputation which the Ordinance imparts. If prior to that consent there was no right or title conferred by the Political Chief, his act afterwards would be merely ministerial duty, the whole purpose of the Ordinance would be reversed and the granting power would in effect, devolve on the Territorial Deputation, but by the construction of the Ordinance, which it seems has always been adopted, the effect of the consent was to place the Concession or grant beyond the supervision of the Federal Executive, and its refusal to consent was not to annull the grant but to cause its submission, to the action of the Federal Executive, which might result or not in its annihilation, the consent of the Deputation did not alter the nature and character of the grant, nor their refusal destroy it; it remained as the granting power had made it. Now every object which it seems to me was intended to be accomplished, by the submission of the matter to the Deputation has been accomplished by the course pursued by the Political Chief in this case, he has made the definite title, expressing in its body that it is made subject to the action of the Territorial Deputation as presented by the Ordinance, the only question here is, whether the failure of the Political Chief to obtain the consent of the Deputation is now to be held as destructive of the force and effect of a perfect grant made subject to it. That this grant prior to the submission of the matter to the Deputation, was a perfect and complete grant of the fee, there is no doubt. It conforms exactly with the model of a complete grant under the Spanish law as furnished by the Supreme Court of the United States. In the case of Menards heirs vs. Massey, reported in 8th Howard 314. The insertion of conditiones is common to them both, it often occurs that conditions subsequent are imposed by the terms of the contract between the parties, but they are entirely consistent with a full investiture of the grantee of the entire estate in fee in one sense of the word; those conveyances are not definitely valid, that is, they carry upon their face and bear about them the means by which they may be destroyed. That an Estate in fee simple may be granted on conditions, see Greenleaf's evidence, 1st vol, 59; and further, a condition indeed may be annexed to every species of estate and interest on real property to an Estate in fee entailed for life, or

years in any lands or tenements, Ib. Title B, Estates on Con. Chapter 13, Page 2. This right of the claimant must be tested by this grant as it is, I do not think it was made by the Political Chief prematurely, in order of time. Whether made prematurely or not, is a question of the construction of the ordinance, and I think that the construction which has been put upon it is right, and furthermore, if it be not right, the consequences must be borne by the Grantor, the Government, and not by the Grantee; the grant is not void, but must stand as it is, although in contemplation of the ordinance, the full and complete title was not intended to be made until after the action of the Territorial Deputation; more especially should it be so held after the long usage of that mode of granting under the ordinance, with the knowledge of the Federal Government, and as we are bound to presume from the evidence on the record in this case. The fact of the authority, and the sole authority of making grants, being vested in the Political Chief, once established, no grant executed by him can be held void for irregularity in the manner of executing their trust, though it may result in making the consent of the Territorial Deputation a quasi condition subsequent instead of a condition precedent to the grant. Here was an authority in the Grantor to grant; and to grant the very lands, or in other words, the lands were grantable, and he fully authorized to grant them, but he has misapprehended honestly, if at all, the course to be pursued in carrying out his conceded power in the point, whether he could not proceed to make the grant after ascertaining the matters entitling the petitioner to it, and then submit it to the Deputation, or submit it first to the Deputation, and then execute the grant. The Political Chief has not usurped any authority conferred on the Deputation by his course; he expressly subjects his action to their approbation; it is a case at most of irregularity in carrying out an ordinance prescribing his duty, and a grant thus made ought not to be avoided, for a departure from its directory injunctions, even in case where the consequences resulting from a departure would be much more serious and important than the total neglect under the Decree of 1824, to have submitted his action to the review of the Territorial Deputation. The Supreme Court of the United States in 5th Wheat. 339, lays down a rule which I think applicable to this case; they say that as to irregularities committed by officers of the Government prior to the grant, they do not doubt, but that the Government, and not the individual, must bear the consequences; and in 11th Wheat. 380, they say that it would be extremely unreasonable to avoid a grant for irregularities, in the conduct of those who were appointed by Government to supervise the progressive course of a title, from its commencement to its consummation in a patent: my opinion is, that this is a perfect title, subject only to affect declared in the ordinance, as consequent upon the failure of the Political Chief to obtain the consent of the Territorial Deputation, and to the conditions which are lawfully annexed to the grant. The grant being definitively made and delivered to the claimant, as the decree contemplated it should be, he had nothing to do further

than to perform those conditions lawfully attached to his grant; and which was to be performed by him. If the grant was not annulled by some action to be had upon it according to the ordinance, by other than himself, it remains as it was when delivered to him, a perfect and complete title; no such action did take place during the existence of the former Government. The consequence of the failure of the Governor to obtain the approbation or consent of the Deputation, we have seen, did not annul the grant, but was only to be followed by a reference of the matter to the Federal Executive; no such reference was ever made, nor indeed was there ever any final action upon it by the Deputation; there was no time limited for their action, and we have no doubt that they would finally have approved of it, as the only objection made to the adoption of a report, by their committee of entire approval, was an evident error in the form of that report; I can see no reason why the Territorial Deputation should not have approved of the claimant's grant; I believe it is substantially approved, and as its neglect was no fault of the claimants, I do not think we ought in equity and good conscience, to refuse him a confirmation of his title. Having considered thus far the grounds of objection or difficulties that presented themselves to a confirmation of this title, and not having seen any fatal defects, we will proceed to examine if any objections affecting its validity, can be predecated of the non-performance of any of the conditions attached to it. I will remark here, that as to several of these conditions, I do not find any authority for their imposition, in the decree of 1824 nor in the ordinance of 1828. But as the Political Chief is required in the ordinance to conform to the laws regulating the matter, as well as to the decree of the 18th August, 1824, and the ordinance of 1828, I am not prepared to say that they are imposed without authority. The presumption is, that he did conform to the laws, the conditions, not to obstruct the highways, crossings, and rights of way, and to build a house and live in it, within a year, and put in the limits of the land besides the land marks, some fruit trees, or forest trees of some utility, seem to have been taken from the regulations of Don Felipe de Neve, dated in June 1779, and approved by his Catholic Majesty in a royal order of the 24th October, 1781. In the ninth section of those regulations we find it provided that the new Colonists shall be free and exempt from paying titles or any other tax on the fruit and produce of the lands, and cattle given to them, provided that within a year from the day on which the house, lots, and parcel of lands be designated to them, they build a house in the best way they can, and live therein; open the necessary trenches for watering their land, placing at their boundaries instead of land marks, some fruit trees or wild ones of some utility at the rate of ten to each suerto of land. App. No. 2 of Capt. Halleck's Report Jen. Doc. No. 17, page 186; if this was the law by authority of which these conditions were inserted in this grant, however suitable to suburban grants, they seem to me to be out of place in the large rural grant of this claimant; and instead of the comparatively mild

penalty of paying tithes and taxes if he failed, the most disproporcionate penalty of losing his whole land, is affixed in this grant, which, however, we may safely conclude, would never have been enforced by his government. Without questioning any further the power of the political chief to insert the conditions which he has put in the grant, I will proceed to the more important consideration of the questions which arise out of this feature of the case; the conditions annexed to the grant are numbered to the extent of five, though the last so numbered is not in fact a condition, but a claim of forfeiture declaiming. Should he (the grantee) violate these conditions, he shall lose his right to the land, and it may be denounced by another. I have no doubt that the conditions in this grant, under any interpretation which the ordinance of 1828 or the decree of 1824 can bear, are all subsequent conditions, for it cannot be supposed that the execution and delivery of the definitive title spoken of in the eighth article of the ordinance was to be longer delayed than the consent of the deputation, and besides, the conditions are of matters in their nature subsequent to that time. It will be observed that some of the conditions are negative in their character, and some active or positive, and one of them at least a mere recital or descriptive allegation of what was already done, which is not strictly a condition, as that must necessarily relate to the future of those which are affirmative and active, some are to be performed by the grantee himself, and others by an officer of the government at his instance, with regard to any failure or imperfection in the performance of any of them which the grantee is not required to perform, he ought not, whatever else he may suffer from that failure or imperfection, to be subject on account thereof to the forfeiture prescribed in the penal clause. It could only be by the reversal of the lenient rule applicable to the construction of the penal clauses that he could be visited with the defaults of a public officer whose action the government had required him to solicit. The penal clause is, "If he shall violate these conditions, he shall lose his right, &c." Surely he will not be held to the penalty for the violation of conditions which he was not required to perform, and the execution of which he could not control, so as far as there appears to be any violation of the conditions which the grantee was to perform. I have no doubt that the failure is of a nature and character which ought not to be visited with the penalty of the loss of his title, the only neglect or violation of matter material to the grant, relates to the time of building the house and living in it. The actual occupation the judicial possession and measurement, the building of a house and his residence in it, all took place many years before the acquisition of the country to the United States, and to inflict the penalty now for the difference of time between that requirement and actual performance would seem to me to be entirely too disproportionate and vindictive, to be sanctioned by the laws of Mexico or by the principles of equity. The imperfect manner of Executing or departure from the laws and ordinances regulating the discharge of the duty

of measureing this Land, which by the condition of the grant, he was required to procure to be performed, is according to my view of the penal clause no ground for inflicting its force upon the grantee and will not be considered by me except in connection with another objection, which is that to the validity of the claim for want of a sufficient segregation of the land, from the remainder of the vacant lands of Mexico, this view of the Question, as to the effect of the conditions in this Grant upon its validity taken in connection with the proof in the record, might suffice perhaps in this branch of the case, but there are other views which I feel called upon to take of this matter of the subsequent conditions in the Grant. This grant in its construction as to its character and as to the effect of the breach of the conditions annexed to it, is to be tested by the law of Mexico, we have already seen that it was in its form and structure a complete conveyance of the simple title. We are now to consider what is the effect under the Mexican Law, upon the rights of the party upon a breach of the conditions which are annexed to it, the entire Fee being invested in the Grantee. The first question which arises is, whether upon the failure or breach of an annexed condition, that vested title was thereupon ipso facto divested out of the Grantee and revested in the Government, without any thing done on the part of the Government to manifest her will, to take advantage of the forfeiture, this a very essential consideration, for if the land in this Grant, did not vest in the former Government, but required some action or proceeding of some kind to produce the result, which proceeding was never had under the former Government, the United States did not acquire the land under the Treaty of Gaudeloupe Hidalgo, but at most a mere naked right to enforce a forfeiture, which belonged to a former Government, the distinction must never be lost sight of in considering this question, between conditions which were to be performed before a perfect right by Grant of the Fee, was to be vested in the party being what we term in our law Conditions Precedent, which not being performed would leave the fee in the former Government and thus under the Treaty would devolve upon the United States to be dealt with as she might direct, and those conditions which according to our nomenclature are called conditions subsequent, which attach to a complete grant of the fee, and have such effect if restricted as the Law of Mexico prescribes. I will advert for a moment to the view of this subject as it is regarded in those Governments with whose principles we are more familiar than we are with Mexico and by which the Government of the United States both in its legislative and judicial departments has always manifested a strong inclination to be governed when adjusting questions of private right between herself and her own citizens, this rule in this country upon the subject, is laid down with so much brevity and yet with such comprehensiveness in a note to the text of Cruse on Real Property as edited Mr. Greenleaf, that I will quote it at large: "a condition is something inserted for the benefit of the Grantor, giving him the power on default of performance to destroy the Estate if he will, and revest it in him-

self or his heirs. As the law does not presume forfeitures, it requires some express act of the Grantor as evidence of intention to reclaim the Estate viz, an Entry," 1st Greenleaf Eve page 44 Tit. 8. the doctrine of the English Common Law on this subject except were varied by special legislation, is adopted generally in this country, that doctrine even in Grants by the Crown of England, is thus laid down by Cruse id 40. In all cases where the crown is entitled to land upon the breach of a condition an office Comtervalis an Entry "Citing Plower, 243." The People vs. Brown, 4th Caeus, 416, 426. In the state of Tennessee, which had a large portion of public lands for distribution, the doctrine with regard to grants by the state is, that even a grant which is void for fraud, must be adjudged so by some process of Law, before the state can reclaim it, 4th Comd. Rep'ts U. S., 657; and that a grant by breach of conditions subsequent is not void but only voidable, U. S. Dig. Val. 1st 472, 1st Overtons Tenn. Reports, 370. I will now advert to the doctrines of the civil law upon that subject, which correspond in a remarkable degree with those of our equity. I am of opinion, that the doctrines which are applicable in this particular, to private grants or conveyances, ought to be equally soto Public Grants, and that when brought before a judicial tribunal, where the nature of the grant is the same, and more especially where its features are identical, the same rules of decision should apply. There are rules which are peculiar in their application to grants by a sovereign which are not involved in the consideration of the force and effect of these conditions; such for example, that in grants by a Sovereign, nothing should be taken by implication, and that in the construction, they shall be taken most strongly for the Sovereign: Whereas in private grants, the rule is, that they shall be taken most strongly against the grantor and in favor of the grantee. But where the question is not one to the meaning and intent, but as to the effect of ambiguitous stipulations, such as conditions whose signification is apparent, the same rules should govern, no matter who are the parties. The Supreme Court of the United States, have held in an opinion delivered by Judge Marshall, that the King of Spain was bound by the fundamental laws of his Kingdom. It is needless to remark that the Republic of Mexico is governed by the same municipal laws which prevailed before her independence, except so far as they are inconsistent with the present form of Government, and have been changed by her own Decrees. In the Partidas I find the doctrine asserted without qualification, that the King is bound by the laws of the Kingdom, although he made them, just as a subject is bound by them, 1st Parb. Fit., 1st Law, 14. So also in Novis'a Recap. Vol. 1st Tit. 2 Lib. 8, it is declared that the laws must be kept as well by the King as the people.

Those doctrines of the Civil Law to which I shall make reference, is as follows: "Clauses of nullity and penal Clauses are not always executed to the Reign, and covenants are not dissolved nor penalties incurred in the very moment, which the condition bears, even although

it shall be agreed on, that the contract shall be void by the bare deed, and without any ministerial act of justice. But these sorts of claims have their effect regulated by the discretion of the Judge, according to the nature of the covenant circumstances, 1st Stra. Domat, page 185, act 222, if the condition depend wholly or in part on the act of one of the contractors, and he has not satisfied it within the time, it is understood that in the cases where it would be equitable to grant delay, it ought to be granted according to the circumstances; as when the delay has occasioned no damage, or if there is any where it may be repaired, Ib. page 184, act 218. In all covenants in which one of the covenants is obliged to do or give a thing, or to accomplish in any other manner, that which is agreed on; and especially in those in which the non-performance is to be attended with a dispoliation of the contract, or with some other *penalty* it is equitable, and for the public interest, that the covenants be not immediately dissolved, nor the penalties incurred, for every sort of non-performance indifferently. Ib. 177, act 196. Although a covenant proves to be null, yet he who complains of it can not restore himself to his own right, unless the other party consents to it. But he must have recovered to the authority of Justice, whether it be to get the nullity declared by a sentence, and himself reinstated in his right, or get the sentence of the Court put in execution in case it should meet with opposition, Ib. page 191, Sect. 240. When a covenant is not dissolved by common consent, the party who complain can not *molest the other*, but he ought to have recourse to Justice, to get the covenant declared void, and the sentence of the Judge put in execution, Ib. 196, act 14. These extracts are very explicit and place the whole matter of the effect of conditions, and their breach, and of penal clauses and forfeitures upon grounds which recommend themselves to the conscience and sense of Justice to every one, and moreover are the foundations of our equity system, on the same heads.

It is laid down explicitly in Novess'u Recep. Book 3d, Tit. 5, law 1. That where the King has once granted to any one he cannot take away *without fault*, (see Culpa.) The important question is how that fault is to be ascertained, and the sovereign will to enforce it be manifested. I have no doubt that in different branches of the administration of public affairs somewhat different modes were adopted to enforce penalties and forfeitures. There were public *denunciations* known officers, and there were secret *denouncers*, who like plaintiffs in our *quetain* actions were instruments of vindicating the violated laws, and of enforcing the penalties attached to their breach. The last part of the penal clause in this deed, alludes most distinctly to such process in case of breach of any of the conditions by the claimant. It says in case "he violate the conditions, he shall lose his right to the land, and it may be denounced by another." Now, if *may* means must, which would be the case in a decree of the same sort, there would be no difficulty in the case. But it is possible that this is a mere *privilege* to *others*, and is a cumulative proceeding, not

exclusive of any on the part of the Government, or decision of the question whether the title does not rest *ipso facto* upon the happening of a breach. An interesting case has lately been decided by the Supreme Court of Texas. Hancock *vs.* McKinney, Nov. term 1851. That decision was upon a complete Mexican Title, or grant like this, with conditions annexed; but the terms in the clause of forfeiture do not expressly refer to the process of denouncement by another. Yet that mode of ascertaining the fact of breach of conditions is referred to in the decision as an established course of procedure. The case, however, is not conclusive of the question whether it was or not the only means by which the title of the grantee could be impeached, or whether any inquisition of any sort were necessary to reinvest the title in the Government.

The language of the Court upon the subject is, "It is certain that down to the period of the commencement of the revolution it would have been competent for any person entitled to land to have denounced any land that he might wish to appropriate to himself, and if in the process of perfecting his title, it should appear that the land that he wished to appropriate had been already granted or conceded, the enquiry would be made, if it had been forfeited for the non-performance of conditions, or from any other cause; and whether the denouncer should have his title or not, depended upon the result of the enquiry, whether such forfeiture have accrued or not." I have remarked that this is not conclusive of the point, but from the general doctrines of the Mexican law, to which I have adverted from the mention made of this mode of procedure in the penal clause of this grant, and from the fact as disclosed in the opinion of the Court in the case from Texas, that no *regrant* would be made upon the mere allegation of forfeiture, but that it must be established by an inquisition. I am brought to the conclusion that there was not in fact a reinvesture of the fee simple title in the Mexican Government of the land now claimed at the time the United States acquired the country, and that this Government only acquired by the Treaty, if anything, the mere right of the former sovereign to enforce a forfeiture. There have been no cases brought before the Supreme Court of the United States under the former treaties and acts of Congress which furnished occasion nor necessity for any express opinion upon the question I am now considering. In the case of the United States *vs.* Sibhald, 10th Peters 321, the Court use this language, "It is unnecessary to decide whether by the acts which authorized the Courts of Missouri and Florida to decide on claims to land therein, Congress intended to assert a right by forfeiture for conditions broken for lands which had been once legally granted; and it may well be doubted whether it would have been reannexed to the royal domain had the province remained under the dominion of the king of Spain. Nor is there any provision of any law of Congress which specially requires the Court to enquire into the performance of the conditions on which grants were made." The case in which it has been held by the Supreme Court of the United

States, that this Government could, or at least would, take advantage of forfeitures which had occurred under the former Governments, were such as were considered by the Court to have been of that category in which no title in fee had vested in the claimant, and that by the stringent force of the ordinances under which they issued, they were utterly void *ab ineto*, and to be considered as never having been given at all; that the conditions were precedent, and their performance expressly required before the concessions were to have any effect of that class of cases are the United States vs. Kingslew 12, Peters 476, United States vs. Wiggins 14, Peters 334, &c. In the absence of any express authority of the Supreme Court, I do not feel at liberty under the terms of the act 3d March, 1851, to decide that we have no authority to declare a forfeiture of complete titles by the non performance of conditions subsequent. In this case the result of that inquiry has been satisfactory to my mind, that the claim ought not to be neglected for the want of any compliance with those conditions. Under the Spanish Law, and more especially under the application of all the facts disclosed by the record of the principles of equity. The only remaining question arising in the validity of the claim in this case, is, whether the land granted can be considered as ever been or is now capable of being severed from the public domain in virtue of what has been done in regard to it, by the authority of the Mexican Government. If any thing more is intended by or embraced in the requirement of a severance of the land granted from the mass of the public domain than the obvious requirements which inheres in every grant or decree, from the very nature of claims, viz: That there must be something granted which can be distinguished from other things of the same sort; it must be derived from the positive laws and ordinances of the Government where the grant is executed. The general doctrine of universal application is plainly stated by Judge Marshal in 5th Wheaton 359, 4th Cond. 682, in the following words: "It is essential to the validity of a grant, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind, but it is not necessary that the grant itself should contain such a description as, without the aid of extensive testimony, to ascertain precisely what is conveyed." In applying this rule we shall observe what is the intention of the writer. As to the thing granted when the intention is to grant a specific thing, as a house or town lot, the house or lot must be described in the deed so as to identify it, or by reference to something by which it can be done, but when the grant only intends to be of a certain number or quantity of an understood and defined nature of things, then that number or quantity is the matter to which the rule will especially apply and that number or quantity must be so certain as to distinguish it from another number or quantity. But all the certainty above that is of a genus or species of a thing of which that certain number or quantity is predicated, and the further identification or specification of the thing, is to be determined in a mode to be agreed upon, or it may be

established by a mean provided by law, it may be by the selection *ad libitum* of the Grantee or Grantor, or as is usually in grants of land by a Sovereign, by the public officer called the Surveyor and where the thing is to be selected, and specified by a public officer, chosen by the Government, for the Grantee to perform that office, his omission or fault does not vacate the grant, 5th Monroes Rpts. 159. This destruction is palpable and cannot be better illustrated than by a case adjudicated in 1st Howard 24. There was a concesion upon a petition of the party stating that he was ignorant of the public lands that were vacant and desirous to avoid interference and dissensions with any person, he further prayed his Excellency to grant them at places where the Surveyor General might survey them as vacant land. There was a segregation of nothing but the number 8000 acres of land and the Surveyor General ordered to survey for the Grantee that amount of vacant land without injury to other persons, and this claim was confirmed by the Supreme Court of the United States. Judge Catim, in delivering the opinion of the Court, as one of the grounds of objection taken on the part of the United States to the confirmation that there is no description whatever in the petitioned grant of the land alleged to be granted, and no valid survey could be made so as to sever any lands from the public domain. He proceeds to answer the objection, and says: although there is no description of any place where the land granted shall be located, in the Governor's Decree, still it was binding so far as it went. The Surveyor General was ordered to survey the land solicited in places vacant and without injury to third persons. The act of the subordinate officer come in aid of the Decree, &c., this proves what, indeed, needed no authority to establish, that a grant may be good though not of any specific thing, which is ascertained in mind at the time of the granting, but the thing of which the number or quantity is predicated, is the object of the grantee to acquire and of the grantor to give all else that is in the grant is moonshine but for that. Now this primary object of getting the thing into possession for use and enjoyment is to be attained in cases of public grants as I remarked above, is usually through the instrumentality of officers of the Government, this appropriation of a specific thing or separation of it from the mass in which it is confounded, is in every government a matter of public policy which relates to herself, the Government desires to know for her own interests and convenience, what is left of her after that granted quantity is taken out, and where it is, so that she may know what she has to give to others, and that others may know what to solicit. It is the duty or rather it is wise policy in every government having lands to dispose of, to adopt such a mode of proceedure of identification of what she grants as will best subserve her own and the public convenience and interest. But it is a matter which concerns herself and her own citizens alone, she may regulate it according to her own views of policy, in which she is generally determined by the means and conveniences she may be able to command, and is often influenced by the

peculiar condition of the country or province and their pursuits, whether agricultural or pastoral of the inhabitants of it. Whatever plan or course she adopt is all sufficient to bind her and her citizens, and should also bind those who afterward succeed to her rights and objections. The Supreme Court of the United States have expressly recognized this view of the subject, in decreeing upon places where land is granted or attempted to be granted specifically and not a mere number of acres, a quantity of land to be identified thereafter either by the party at his election or by a public officer, they have laid down the rule upon this subject expressly with reference to the laws and ordinances of the country, making the grant, they say where the grants even by a liberal construction contain no points by which the lands can be identified the grants must for vagueness and uncertainty be held void, the Courts have not been influenced in this conclusion by any of the common law rules which made grants void for uncertainty, such for example, if the king grants lands in a Peat waste without ascertaining what part on the special name of the land, or how bounded, the grant is void for uncertainty, and yet if an individual so grant it would be good. They have only applied the laws and ordinances of the Government under which these claims have derived and required that the thing granted be so described as to be capable of being ascertained by extraneous testimony, 15th Peters 215. So in 11th Howard 127. The Court say these conclusions are in strict accordance with the numerous decisions of this Court, which insist on the necessity of the severance of the property claimed from the public domain either by actual survey or by some ascertained limits or mode of separation recognized by competent authority. In view of these principles we will examine for a moment the plan or system of granting adopted by the Mexican Government by the ordinance of the 21st Nov., 1828, carrying out the general decree of the 18th of August, 1824, under which the grant in this case was made. The mode of disposing of the public domain by the Government of Mexico was unlike that which had been pursued by the Spanish Government in the provinces of Louisiana and Florida, and indeed unlike that pursued in most countries with whose practice in particular we are the most familiarly acquainted, in all those countries the general course has been upon the petition being presented by the party or application made in some mode by any one desirous of obtaining land for the purpose of furnishing the necessary certainty of description and of separating the land from that which is not granted, to direct a survey to be made by sworn officers or surveyors using the implements and apparatus necessary to do the work upon the ground, and afterwards to plot it upon paper. The description of the land being thus made by survey, is transferred into the grant. It consists of courses and distances run by the Surveyor and of stakes or marked trees or other natural objects, which ascertain the very land which was actually surveyed. But in California therewas no such means provided by the Government for that purpose and yet the public policy and interest

of the public required the advancement, settlement and cultivation in this region of her vast domain. The Government proceeded to do this foregoing the convenience, which her more regular and usual course might have attained in the matter of segregating the land granted, from the residue of her public domain. In this unprovided condition of the country, she adopted the plan of granting, requiring the applicant to present to the Political Chief, a petition as appears in the 4th article of the Ordinance of 1828, stating with particularity all that related to the person of the applicant, marking likewise, with the distinctness that may be (possible) and describing in a map (deseño) the land which he solicits." That map or plan, which was a rude sketch, made with no scale of distances, with no reference to, or at least with no accuracy as to course, was generally drawn as it would seem by the finger or some blunt instrument, and the lines colored with the juice of berries or charcoal, or some other coloring substance. It contained always, notable natural objects, with which the country abounds, and generally, if not invariably gave a *name to the places or tract* solicited, which, if not then notorious soon became so, and generally retains it still, stating the supposed quantity in leagues within the natural monuments, of rivers, hills, the sea, the Sierra, or some remarkable ravine, or Promontory of that coast range of mountains. That description went into the grant instead of a survey, and designated the *locus in quo*, the granted leagues were to be contained, sometimes the grant was by those metes and bounds, and sometimes of a number of leagues within them. After the grant was made, the party, in the language of the Ordinance, was to proceed to the possession, and to a measurement of the land according to the Ordinance, which measurement was of the nature and kind exhibited in the record of this case, such was and is the mode of segregation in this case, as provided for all things acknowledged and recognized by the Government of Mexico, in California. As to any survey in the legal sense of that word, as understood and practiced in the Provinces of Louisiana and Florida, and generally elsewhere, under the superintendence of a Surveyor General, such a thing was not contemplated nor enacted; to have required it, would have been like the Egyptians' exaction of the Captive Jews, to *make bricks without straw*. There never was, that we can hear, of an officer holding the place of a Surveyor, in California, under its former Governments. The neighbouring Justice of the Peace, or Alcalde, who was required to officiate in that capacity, was not qualified to do more than to put the party upon the land and make an attempt to measure it, which with no compass, but the sun, and with a lasso for a chain, was of course, very far short of accuracy, of the same process conducted according to Galvin or to Gunter. It was all however, that the Government had provided means for, and was all that she required or expected. It was conducted with the observance of due form and ceremony, and none of its rites is almost identical with the *livery of seesun* of our Saxon Ancestors. The

grantee was required to pluck turf or break twigs from the trees or shrubbery on the ground, or pick up rocks, and in token of his full ownership, to throw them to the four winds. The proceedings on the ground were all reduced to writing, and deposited by the Magistrate in the archives, where they are now found, with as much care and facility as a navigator would render up the chart of his voyage of discovery to the Board of Admiralty, or to the Secretary of the Navy. Now was this all a mere idle mockery. The result of this mode of judicial possession and measurement resorted to from necessity, as it would seem, has been to identify the spot; and lead us to it with almost unerring certainty. In this case the lines were pursued on three sides of the tract, the record stating with particularity the progress of the measurement. It does not appear that they did more but close the operation by *Vesta Ojos*, or a survey with the eyes. A deposition of a witness referred to in the case of Bricom, in 11 Howd. who was a regular practical Surveyor, states that in all his experience, he had never met with a Spanish Survey which enclosed every side of the tract, even the Surveyor General of Louisiana, seemed to think that the purpose of the Government was accomplished by that, and doubtless it was a sufficient identification, I do not think if there are any such monuments in existence as the grant calls for, that any Surveyor could miss his way to the place; the Government of Mexico, I feel some assurance, would never have turned the claimant out of doors, from off the land, where her officers had put him, on the pretext that the land could not be ascertained; she could not in good faith have done so, and I think this Government ought not to deal more rigorously with him than that. Her policy was satisfied by what was done in regard to the separation of the land granted from the residue of her *vacant lands*, and I entertain no doubts, that in making the survey of this country, according to the perfect system which the Government of the United States has adopted, that there will ever be any insurmountable difficulty in locating the claim of Cruz Cervantes. Guided by the map or *Diseño* referred to in the grant, and forming a part of the monuments of title; by the possession which has continued from the day at least, on which he was formally installed in it, to the present time, within the monuments described in the grant. A Surveyor *can now* without difficulty, find not only where the land lies, but by the aid of the recorded measurement of his less accomplished predecessor, he may find the beginning, and at any rate, he will be furnished with abundant means to make one.

In conclusion, I think from a full view of the whole case, that the claim of Cervantes is valid.

Aug. 3d, 1852.

HARRY J. THORNTON,
Com'r.

Filed in office August 3d, 1852.

GEO. FISHER,
Sec'y.

(*Opinion of Com'r Hiland Hall.*)

Claim of Cruz Cervantes, No. 56.

Opinion delivered by Commissioner Hall on making the Decree of final Confirmation.

When the opinion of the Board on the principal legal points involved in the claimant's title, was delivered by my colleague on the 3d of August last, the entry of a final decree of Confirmation was suspended. At that time it was a matter of doubt, in which district of California the land was situated, rendering it uncertain what District Attorney, under the 8th section of the act of March 3, 1851, our decision, with the reasons for it, should be certified. There was also then pending before Congress a bill, proposing a change in the law in that respect, and requiring our decisions to be certified to the Attorney General in lieu of the District Attorney, which he had strong reasons to believe, either had been, or would be passed before the close of the session then about to be terminated. In this state of uncertainty, in regard to the proper officer to whom our decisions shall be reported, final confirmations were also suspended in three other cases, in which opinions were given previous to the 16th of August, at which time our labors at this place ceased, in consequence of an order from the President for us to hold a session of the Board on that day at Los Angeles. This uncertainty in regard to the actual state of the law, applicable to certificates of our decisions, continued until the receipt of the new act of Congress on the subject, towards the middle of October. Since which time it is well known to have been impracticable for the Board to take up the subject, until our organization again at this place on Monday of the present week. There was, also, in August last, a difference of opinion between my two associates in regard to the propriety of making final decisions of confirmation without previous surveys of the land, which question I was unwilling at that time unnecessarily to press upon. It is now, however, proper to dispose of it, and as the question is one of importance, I shall state as briefly as I can, the views I am inclined to take of it. By the instructions of the Commissioners of the General Land Office to this Board, dated Sept. 11, 1851, approved by the Secretary of the Interior, it appears to have been contemplated that preliminary surveys should be required by the Board, of all tracts claimed in advance of any confirmation of title. Those instructions shall be the following language on this subject:—

"You will require the claimant, *in all cases*, to file a duly authenticated plan of survey, exhibiting the tract claimed, and showing the nature and extent of any claim interfering therewith. This is deemed *indispensible*, in order by such initiatory survey, to prefix with precision and certainty, the limits of any tract claimed, thereby avoiding in regard to location, all doubt and controversy hereafter in case of confirmation, and furnishing at the same time to the Commissioner

and to the Courts, evidence to the existence and nature of conflicting claims."

These instructions as they are recorded, must in their nature be considered as adversary merely. The Board of Commissioners as constructed by the act of March 3d, 1851, in passing upon the validity of claims, exercises an authority wholly independent of the General Land Office, and of the Department of the Interior. The act does not specify the particular evidence which the Commissioners shall require to establish the validity of a claim, or authorize any other department or branch of the Government to do so, and what the amount and what the character of the evidence shall be to justify a confirmation, is consequently within the exclusive province of the Commissioners to determine.

By the law, however, constituting the Constitution, patents for the land confirmed by the Board, are to be issued from the General Land Office; such has heretofore been the case in regard to private claims confirmed by former Commissioners and by Congress, and it appears to have been usual for the office to issue instructions to Boards of Commissioners heretofore constituted. As the views of the head of that office in regard to the effects of confirming titles with indefinite or uncertain limits without previous survey, must be supposed to be the result of a particular acquaintance with the subject acquired by long experience, I cannot but feel that they are entitled to a respectful consideration. I do not regard them as authority, but in the nature of information and argument that should not be lightly disregarded. The leading object in requiring an initiatory survey in advance of confirmation, as stated by the Commissioner of the Land Office, is to fix with precision the limits of every tract claimed, thereby avoiding, in *regard to location*, all doubts or controversy thereafter, and to furnish to the Commissioners and the Courts, evidence of the existence and nature of conflicting claims. I understand it to be the opinion of my associate, that the Act of Congress constituting the commission, has been misconstrued by the Land Officer, that the authority conferred on the Board to decide on the validity of claims, does not embrace any matters connected with their location; that it is the duty of the Board in confirming a claim, to do it without a particular description of the land, but by reference to the description contained in the title papers, leaving it to the Surveyor General to find the land and to locate it, and that within this locating process of the Surveyor General is embraced that of deciding upon all interfering or conflicting claims to land, in *exclusion of the jurisddiccion of this Board to notice or consider them.* If this be a correct view of the law, a survey preliminary to a confirmation would doubtless, in most cases, and probably in all, be a mere nugatory act. For if, after the limits of a tract of land, and the limits of any claim interfering therewith, had been ascertained and pointed out by an initiatory survey, it would be beyond the authority of this commission to confirm the claim according to such limits, or to determine to which claimant the disputed land should be con-

firmed; such survey would indeed seem to be wholly useless. I have not been able to satisfy myself that the jurisdiction of this Board is thus restricted.

By the 13th section of the act of March 3d, 1851, authority is undoubtedly conferred on the Surveyor General of California to decide temporarily upon the lines that shall be run as the boundary between conflicting or interfering confirmed claims, but I do not think it necessarily follows that the Board are to disregard conflicts which come to their notice before confirmation for the purpose of bringiug them within the jurisdiction of the Surveyor General. On the contrary I think the power in the 13th section was conferred on the Surveyor General because it was forsseen that notwithstanding every precaution which might be taken by the Board, questions in regard to conflicting boundaries might and probably will arise after confirmation for the determination of which some provision was necessary to be made.

By the 13th section of the act aforementioned, it is made the duty of the Surveyor General "to cause all private claims which shall be *finally confirmed* to be accurately surveyed." And it is then provided that "in the location of said (*confirmed*) claims" the Surveyor General is to have the same power as is conferred on the Register of the Land Office and Reciever of public moneys of Louisiana, by the 16th section of the act to create the office of Surveyor of the Public Lands in Louisiana of the 3d of March, 1831. In regard to this act of March 3d, 1851, it is to be observed that previous to its passage several Boards of Commissioners had been constructed to act upon private Land Claims in Louisiana, who had confirmed many claims and on whose reports numerous others had been confirmed by Congress. The 6th section of this act thus referred to in the act of March 3d, 1851, has no relation to claims in the condition they had been or might be, when presented to commissioners but only to such as had been already acted upon. The language of the section is as follows: "That in relation to all such confirmed claims as may conflict or in any manner interfere with each other, the Register of the Land Office and Receiver of public moneys for the proper Land District are hereby authorized to decide between the parties, and shall in their decision be governed by such conditional lines or boundaries as have been or may be agreed upon between the parties interested either verbally or in writing, and in case no lines or boundaries be agreed upon between the parties interested, then the Register and Receiver are hereby authorized to decide between the parties in such manner as may be consistent with the principles of justice." The section then provides that the claims shall be surveyed in accordance with the decision of the Register and Receiver and that their decisions and the patents issued in conformity thereto shall not preclude a legal investigation and decision of the controversy between the Claimants.

I do not suppose that it was understood by the framers of the act of March 3d, 1851, that the Commissioners and Congress in the

claims that had already been confirmed, had designedly confirmed claims with conflicting boundaries, not that the framers of the act of March 3d, 1851, in providing a like remedy for conflicts between claims after they should be confirmed by this Board, had it in contemplation that the Board would have confirmed claims with known conflicts for the mere purpose of having them afterwards determined by the Surveyor General. On the contrary, I regard the authority conferred on the Surveyor General, as it appears to have been understood by the Commissioner of the Land office, and as was evidently that conferred on the Register and Receiver under the act of 1831, as furnishing a remedy for such conflicts only, as had not been previously noticed and consequently could not have been avoided.

By the 8th section of the act of March 3d, 1851, under which this commission is constituted "each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government," is required to present the same before the Board of Commissioners, and the Com's on the evidence produced before them are to decide on the validity of the claim. I think the extent of the tract claimed, and the place where it is to be located, may be involved and may be important to be considered by the Comsioners on determining the validity of the claim. If the land is to be located on a tract which had been previously granted to another party, I do not perceive how we could declare the claim to be valid. So I think the title of a party to a tract of Land claimed to have been granted him, may be valid in part and invalid for the residue. If two grants interfere by lapping on to each other, both cannot be valid for the whole, and in order to determine the extent to which each is valid, the Commissioners, I conceive, must necessarily, by means of a preliminary survey, or other satisfactory evidence, determine the location and extent of each. In such case the surveyor, in our certificate of confirmation, could not be referred exclusively to the description in the title papers for his direction in making this survey, but the Commissioners necessarily describe the boundaries as they should find them to be by evidence, and thus to determine the locality of the land. The limits and boundaries of a tract as well as its quantity, may be materially affected by the construction to be given to the title papers, which construction I think must be made by the Commissioners. The validity of a claim therefore, as it appears to me very much, depends on the location which is to be given the Land claimed. Its locality is consequently a matter to be considered and passed upon by the Commissioners. An argument against the authority of this Board to inquire into the locality of a tract of land claimed under Spanish and Mexican Grants, has sought to be drawn from the language of the section of the act of May 26, 1824, conferring authority on the District Court, to determine certain land titles. It is said that act expressly gives the Court authority to determine the locality and boundaries of the land claimed, and that the act constituting this

commission not having used similar language, it is to be inferred that the authority was not intended to be conferred on the Commissioners. It is true that in the act referred to in the enumeration of what matters may be determined by the Courts, the locality and boundaries of the claim are among others mentioned, but this language is immediately followed by a direction to the Court "by a final decree to settle and determine the validity of the title, using the term "*validity of title*" to comprehend all the matters which had been previously mentioned as coming within the authority of the Court. If this be not the construction of the language it would follow, that the final decree of the Court would have undetermined the very locality and boundaries which it had just been directed to pass upon. I think the term *validity of title* thus used in the act of 1824, was intended to embrace the location and boundaries of the land and all other matters proper to be considered in passing upon the title, and that the words validity of the claim used in the 8th section of the act of March 8d, 1851, have the same signification, and consequently the powers of this commission and of the District Court, under the act of 1824, are, in that respect, the same. I do not, therefore, find any want of authority in this Board to act upon and determine the boundaries of land for which a confirmation of title is one of evidence, the very locality and boundaries which it had just been directed to pass upon; I think the term *validity of title* thus used in the act of 1824, was intended to embrace the location and boundaries of the land, and all other matters proper to be considered in passing upon the title, and that the words validity of the claim used in the 8th section of the act of March 8d, 1851, have the same signification, and consequently the powers of this commission and the District Court, under the act of 1824, are in that respect, the same. I do not, therefore, find any want of authority in this Board to act upon and determine the boundaries of the land for which a confirmation of the title is one of evidence. The question, however, whether the Commissioners shall require a survey to be made of a tract of Land claimed, in advance of confirmation of the Title, is one of evidence. The Board has no direct authority to compel a survey to be made, but it may decline to confirm a claim in the absence and for want of such evidence, of the extent, locality and boundaries of the tract claimed, whether the Board should do this in all cases in conformity to the views of the Land office. I confess I have entertained considerable doubts, I believe with the head of that office, that much future controversy and litigation would by such survey be prevented, and that other advantages would be derived from them. To require them, would, however, impose a heavy burden of expense on the claimant, and if they are to be furnished in all cases, the action of the Commissioners would be greatly delayed, and a much longer time to complete the business of the commission rendered necessary than would otherwise be the case. For these, and other reasons which I do not deem it necessary to state in detail, I have come to the determination not to insist upon preliminary surveys, where the

description of the land is reasonably definite, except in cases where the information which may be expected to be derived from such surveys, shall seem to be essential to the just determination of the claim. I agree that the reasons heretofore assigned by my associate are sufficient to justify the confirmation of this claim, in a portion of them I do not concur. And I concur in the confirmation of the claim without a preliminary survey.

December 18, 1852.

HILAND HALL,
Com'r.

Filed in office, Dec. 18, 1852.

GEO. FISHER,
Sec'y

(*Decree of Final Confirmation.*)

CRUZ CERVANTES, Claimant,
vs.
THE UNITED STATES.
} No. 56. Final Opinion or reasons of decision and decree of Confirmation.

This Board having already by an opinion heretofore pronounced, and filed on the 3rd day of August 1852, decided upon all the questions necessary to a final decree of Confirmation in this case, except as to the quantity: and having now fully considered this point, we proceed to declare the further reasons on which our determination is founded. The decree of the Mexican Government of the 18th of August 1824 and the Executive Ordinance of the 21st November 1828 regulate the quantity of every grant made in virtue thereof, the maximum being eleven square leagues and the minimum two hundred varas. The quantity then being an inherent ingredient of the Grant and expressly prescribed, must be presumed to have constituted the cardinal or controlling call of the same. The purpose of the map or diseño being the segregation of the premises from the residue of the public domain; to fix its identityand furnish a guide to its future location and survey. The conjectural nature of this map or diseño as to quantity and the terms of the Grant which expressly reserve for the use of the Nation, whatever should result upon actaal measurement, over and above the named quantity within its bounds, clearly shew that the intention of the grantor was not an irrevocable grant by metes and bounds to the extent thereof, but that the granted quantity lying within those metes and bounds was to be afterwards identified by a survey ascertaining the Sabrante if any, and separating it from the private Estate of the grantee: the map or diseño being the act of the Petitioner designating the land which he sought: we think it just and proper to restrain to the extent of the limits or bounds of the same map though they should not contain the granted quantity.

This construction is in accordance with the intention so strongly manifested by the Mexican Government not to grant the same land to

different individuals. As to the *Sobrante* within the bounds of the map, if there should be any, a grant thereof had no effect, until after the ascertainment by the Government of the precise location of the prior grant, upon whose identification indeed its existence depended.

HARRY J. THORNTON.

In consideration of all which we now proceed to make, the following final report or decree of Confirmation.

We do hereby decree the Claim of the said Cruz Cervantes be, and the same is hereby confirmed to the extent or quantity of two square leagues or Sitios de Guardo Mayor, and for no more; being the same land described in the grant and Espediente referred to therein, and of which Judicial possession was given to the Claimant as appears by the Evidence Provided that the said quantity of Land to him granted, and now here to him confirmed be contained within boundaries called for in the grant and map to which the Grant refers; and if there be less than two square leagues or Sitios de Guardo Mayor within the said boundaries, then we confirm to him the said less quantity, it being manifest that there is more than two hundred varas which is the minimum, as Eleven Leagues are the maximum of Mexican Grants.

HILAND HALL,
HARRY J. THORTNON, } *Com'rs.*

Filed in office Decr. 18th, 1852.

GEO. FISHER,
Sec'y.

No. 56.

CRUZ CERVANTES *vs.* UNITED STATES. } Before the U. S. Board of Land Commissioners, to ascertain and settle Private Land Claims in California.

It appearing to the satisfaction of the Board that the Land claimed in this case lies south of the 37th degree of north latitude, and that no transcript of the proceedings in this case has been sent to the United States District Court for the Southern District of California, it is ordered by the Board that the Secretary make out a copy of all the proceedings and papers in this case, forward them to the Clerk of the said District Court and notify the Attorney General of the United States of such action.

Motion is made that the foregoing order be entered in this case and made a part of the record.

J. H. McKUNE,
U. S. Law Agent.

I admit the Land claimed in this case lies in the State of California south of parallel 31 deg. north latitude.

J. H. McKUNE,
Law Agent.

Filed in office Aug. 3d, 1834.

GEO. FISHER,
Sec'y.

(*Order.*)

And it appearing to the satisfaction of this Board, that the land hereby adjudicated, is situated in the Southern District of California, it is hereby ordered: That two Transcripts of the proceedings be made out and duly certified by the Secretary, one of which Transcripts shall be filed with the Clerk of the United States District Court for the Southern District of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISRIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing one hundred and fifty-six pages, numbered from 1 to 156 both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses upon which the same is founded, on file in this office, in Case No. 56 on the Docket of said Board, wherein Cruz Cervantes is the Claimant against the United States, for the place known by the name of "San Joaquin or Rosa Morada."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office), at San Francisco, California, this Seventh day of November, A. D. 1854, and of the Independence of the United States of America, the Seventy-ninth.

[SEAL] GEO. FISHER,
Sec'y.

UNITED STATES DISTRICT COURT.
Southern District of California.
CLERK'S OFFICE, LOS ANGELES, *Nov. 22d*, 1855.

I Charles E. Carr, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing 155 pages, numbered from 1 to 155 both inclusive, contain a full, true and correct copy of Transcript No. 56 filed in this office, wherein Cruz Cervantes is appellee and the United States are appellant for "San Joaquin or Rosa Morada."

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Los Angeles, California, this Twenty-second day of November, A. D. 1855, and of the Independence of the United States of America, the Eightieth.

[SEAL] C. E. CARR,
Clerk.

DISTRICT COURT OF THE UNITED STATES.
Southern District of California.
CLERK'S OFFICE, LOS ANGELES, *Nov. 28th*, 1854.

CRUZ CERVANTES, Appellee,
ads
THE UNITED STATES, Appellant, } Docket No. 178.
Transcript No. 56.

Be it remembered that in the above entitled cause, on appeal to the District Court of the United States for the Southern District of California, in the United States of America, from the decision of the United States Land Commissioners to ascertain and settle private land claims in California.

The following proceedings were had, to wit:

Transcript from the Board of Commissioners in said case No. 56, on the Docket of said Board filed, and marked No. 178 on the Docket of *of* this Court.
Filed Dec. 19th, 1854.

(*Vide* page 1.)

Notice of intention to prosecute appeal by the Attorney General of the United States.
Filed Aug. 20th, 1853.

(*Vide* page 3.)

Notice of appeal filed Feb. 5th, 1855.

(*Vide* page 3.)

Notice of appeal filed May 11th, 1855.

(*Vide* page 3.)

Upon which notice the following subsequent proceedings were had in their chronological order, to wit:

Petition for review filed.

(*Vide* page 5.)

Answer to petition for review filed.

(*Vide* page 11.)

Motion and order of Court for additional testimony.

(*Vide* page 14.)

Testimony of P. Ord.

(*Vide* page 15.)

Case submitted.

(*Vide* page 16.)

Opinion in this case delivered by Hon. Isaac S. K. Ogier, and decree entered.

(*Vide* page 16.)

Motion for appeal to Supreme Court of the United States and order of Court granting the same.

(*Vide* page 17.)

(*Notice of Appeal.*)

CRUZ CERVANTES, Claimant,
vs.
UNITED STATES.

ATTORNEY GENERAL'S OFFICE, WASHINGTON, D. C., *July 22d*, 1853.

You will please take notice that the appeal in the above case from the decision of the commissioners to ascertain and settle the private Land Claims in the State of California, to the District Court of the United States for the Southern District of California, will be prosecuted by the United States.

C. CUSHING,
Attorney General, United States.

To the Clerk of the District Court of the United States, Southern District of California, Monterey.

Filed August 20th, 1853.
(Signed) A. S. TAYLOR.
Clerk.

Notice of Appeal, Filed Feb'y 5th, 1855.
(Signed) C. E. CARR.
Clerk.

Notice of Appeal, Filed May 11th, 1855.
(Signed) C. E CARR.
Clerk.

IN THE DISTRICT COURT OF THE UNITED STATES
for the Southern District of California.
Los Angeles County, State of California.

CRUZ CERVANTES *ads.* THE UNITED STATES. } No. 178. Transcript No. 56.

(*Petition for Review.*)

To the Honorable Isaac S. K. Ogier, Judge of the District Court of the United States for the Southern District of California.

The petition of Pacificus Ord, (of Los Angeles county) Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in Court in his proper person, in the name and behalf of the United States, represents as follows: That heretofore, to wit: on or about the 20th day of February, A. D. 1852, Cruz Cervantes presented a petition to the Commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called San Joaquin, or Rosa Morada, in the County of Santa Clara, in the words and figures following, viz., "Cruz Cervantes, a citizen of said State, gives notice: that he claims by virtue of a grant from the Mexican nation, a tract of land situated in the County of Santa Clara, in said State, and known by the name of San Joaquin or Rosa Morada, with the boundaries described in the grant thereof, to wit: on one side the aroyo of San Felipe, on the second side the hills or mountains of San Joaquin, on the third side the arroyo of Santa Clara, and on the fourth, a line drawn through the plain of San Juan ———, said land was conceded to claimant by a grant issued on the 1st day of April, A. D. 1836, by Nicolas Gutierez, Superior Political Chief, ad interim, of California, and thereby authorized to grant lands in the name of and on behalf of the Mexican nation.

On the 18th day of February, 1841, judicial possession of said land was given to claimant by Juan Miguel Anzar, Judge of first instance of that Jurisdiction.

Said land has been occupied by claimant according to law and the directions contained in said grant, and is now held by him in quiet possession.

There is no conflicting grant to said land or any portion thereof in the knowledge of claimant. Said land has never been surveyed, but its boundaries are natural, and well known, and may be easily traced. It is supposed to contain the quantity of two *sitios de Ganado Mayor*, more or less.

A copy and translation of said grant, and a copy of said act of judicial possession, are herewith presented, and the originals are ready to be produced and proved as may be required. Claimant requests a speedy examination of his said claim, and its recognition and confirmation.

Your petitioner further represents that thereafter, to wit: on the 18th day of December, A. D. 1852, the said Commissioners confirmed by final decree the said claim of the said Cruz Cervantes, in the words and figures following, to wit:

"In consideration of all which, we now proceed to make the following final report, or decree of confirmation."

"We do hereby decree the claim of the said Cruz Cervantes be, and the same is hereby confirmed to the extent or quantity of two square leagues or sitios de ganado mayor, and for no more, being the same land described in the grant and espediente referred to therein, and of which judicial possession was given to the claimant, as appears by the evidence."

"Provided that the said quantity of land to him granted and now here to him confirmed, be contained within boundaries called for in the grant, and map to which the grant refers, and if there be less than two square leagues or sitios de ganado mayor within the said bounds, then we confirm to him the said less quantity, it being manifest that there is more than two hundred varas, which is the minimum, as eleven leagues are the maximum of Mexican grants."

HILAND HALL.
HARRY J. THORNTON.
Commissioners.

Filed in Office Dec. 18th, 1852.

GEO. FISHER,
Sec'y.

That thereafter, to wit: on the 19th day of December, A. D. 1854, a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded in said cau e, was filed in the office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 178, (Transcript No. 56) reference to which, it is prayed, may be had and made a part of this petition.

That on the 3rd of March, A. D. 1853, and again on the 25th of November, A. D. 1854, the Honorable Caleb Cushing, Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree, and proceedings of said Commissioner in said cause (No. 56,) and the papers and evidence on which said decree was founded,

That thereafter, to wit: on the 20th of August, A. D. 1853, and again on the 5th of February, A. D. 1855, the said Attorney General of the United States, filed, or caused to be filed, on behalf of the United States, a notice with the said clerk of said District Court for the Southern District of California, that the appeal in said cause of Cruz Cervantes vs. the United States, from the decision of the said Commissioners to ascertain and settle the private land claims in the State of California, in the District Court of the United States for the Southern District of California, would be prosecuted by the United States.

Your petitioner further represents that the said land claimed as aforesaid, is within the jurisdiction of this Honorable Court.

And your petitioner further represents, and insists that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed, and set aside, for many errors and imperfections of law and evidence apparent in said certified transcript of said cause, now in appeal from said Commissioners to this Honorable Court. And your petitioner further represents, that the said claim is invalid, and the said decree erroneous on the following grounds:

I. And the said Attorney denies all and singular each and every allegation in the said petition of said claimant, to said Commissioners of said date, and he further denies that any grant for said land was ever made as alleged in said petition, and he denies further, that the said claimant has shown any sufficient evedence of the validity of the said claim.

II. That the said alleged grant of Nicolas Gutierez was made in violation of the 4th article of the colonization law of Mexico of the 18th of August, A. D. 1824, in this that the land granted as alleged by claimant, was, and is, within ten leagues of the sea coast and there is no evidence shown by claimant that the Supreme General Executive power of Mexico previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea coast, and it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land claimed as aforesaid, was occupied and in the possession of the missions of the Territory of Upper California, and it was held and occupied particularly by the mission of San Juan Bantista, and could not, therefore be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August, A. D. 1824, and the regulations for the colonization of the Territories of Mexico, of the 21st day of November, A. D. 1828.

V. That there is no evidence that the said alleged grant was ever approved by the Territorial deputation or Departmental Assembly of California, or the Supreme Government of Mexico.

VI. That the said alleged claimant fails to show a definitive title for the land claimed as aforesaid.

VII. That there is no evidence that the claimant performed the conditions of the said alleged grant, by building a house on the said land, and having it inhabited within one year from the date of the said alleged grant. And the said claimant wholly failed to perform the said conditions of the said alleged grant, and the said alleged grant, therefore, lost its vitality, and the said claimant lost his right to the said alleged land under said alleged grant, if he ever had any.

VIII. That the pretended judicial acts of survey on possession of said land by Juan Miguel Auzar, dated on or about the 18th day of

February, A. D. 1841, were not made according to the said alleged grant and map referred to therein, nor according to the ordinance or law, and that they are vague, indefinite, and void for uncertainty.

IX. That the said Auzar had no lawful authority to perform the said pretended judicial acts, for the reason that at the pretended date of said acts, the said alleged grant had lost its vitality by reason of the non-performance of the said conditions of the said grant by the said Cervantes as aforesaid, and for the further reason that the said alleged grant had never received the approval of the Deputation or Assembly of California, nor that of the supreme government of Mexico, and the said pretended judicial acts were therefore void.

X. That the said alleged grant of said land to said Cruz Cervantes by said Nicholas Gutierrez dated the 1st day of April A. D. 1836, contains no sufficient description of the locality, extent, and boundaries of the land, by which it can be identified and surveyed; and the said alleged grant is vague, indefinite, and void for uncertainty.

And the said claimant having no valid right or title derived from the Spanish or Mexican Government, to the said land claimed by him, as aforesaid; the lawful right, or title in and to the said land, was acquired by, and it now belongs to the said United States by virtue of the treaty of peace, friendship, limite and settlement with the Republic of Mexico, dated at the city of Guadelupe Hidalgo, February 2nd A. D. 1848.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made, or grounded thereon; but the said petition ought to have been dismissed and said claim rejected by said Commissioners upon the grounds aforesaid.

Wherefore the said Pacificus Ord, Attorney of the United States for the southern District of California, for and in behalf of the United States, by reason of the premises, and in pursuance of an act of Congress entitled "an act to ascertain and settle the private land claims in the State of California." Approved March 3rd A. D. 1851, and the laws and statutes in such case made and provided, prays that the said Cruz Cervantes may be served with a copy of this petition, and that this Honourable Court will review the said decision, or final decree of confirmation of said Commissioners to ascertain and settle the private land claims in the State of California, and decide the validity of the said claim of said Cruz Cervantes, for said land claimed and confirmed as aforesaid; and that the same may be decided invalid. And all such other orders, judgments or decrees, as may be just with costs and general relief.

P. ORD.
Attorney of the United States for the Southern District of Cala.

Filed May 18th 1855.

(Signed) C. E. CARR,
Cl'k.

(*Answer to Petitioner.*)

In the District Court of the United States for the Southern District of California.

THE UNITED STATES, Appellants,
vs.
CRUZ CERVANTES.

The answer of Cruz Cervantes to the petitioner, filed herein by the Attorney for the United States, respectfully shows: That the claim of said Cervantes for the tract of land in said petition mentioned, was presented to the Commissioner for settling land titles in California under the provisions of an act of Congress, approved March 3d, 1851, providing for the organization and prescribing the function of said Commission. That said Commission proceeded under the authority of said act of Congress, to examine said claim on the testimony presented therein, and on the 3d day of August, 1852, decided on the validity of said claim, and decided it to be valid, and that no subsequent proceedings have been taken by the United States which can tend to invalidate said decision or to authorize any Court of the United States to review the same by appeal or otherwise, but that said decision became final in favor of the claimant at the expiration of ninety days after its delivery. That the subsequent act of Congress under which it is supposed that this proceeding is undertaken, namely, the act of 31st August, 1852, could not affect a decision that had been previously rendered and does not assume to operate retroactively, and hence could not and does not assume to operate on the decision rendered by said Commission herein, or to authorize any process for its invalidation or review. That if said last mentioned act of Congress could, or was intended to apply to said cause, no proceedings have been taken under it which authorizes this Court to take cognizance of any appeal herein, and this appeal ought in pursuance of said act and for want of due proceedings thereunder on the part of the appellants to be dismissed. And for further answer to the petition herein filed by the Attorney of the United States, it is shown, that said cause has passed through all tests and all the tribunals that any act of the Congress of the United States or any law whatsoever authorizes not only for the reasons herein before stated, but because the decision rendered by the Commission as recited in said petition, was heretofore reviewed on appeal therefrom, by the District Court of the United States for the Northern District of California, and by said Court on the 31st day of October, 1853, reversed and annulled, and from said decision of said District Court an appeal was taken by said Cervantes to the Supreme Court of the United States, and said last mentioned tribunal by a decree entered in their December term, 1853, reversed and annulled the decision of said District Court, thereby leaving in full force and effect the decision of said Commission. And for further answer, it is shown that the United States

further prosecuted, and, said District Court of the United States for the Northern District of California, notwithstanding the said decree of the Supreme Court of the United States, and during the pending of the present appeal in this Court, again entertained jurisdiction of said cause as an appeal from said Commission, and in the June term of said Court, 1855, rendered judgment therein affirming the decision of said Commission and declaring the claim of the appellee herein to be valid, and from that decision the United States have appealed to the Supreme Court of the United States, and said Cervantes is instructed and believes that he ought not, and cannot by any lawful proceeding, be held to any answer or defence in the same cause of action by the same plaintiff in different Courts and different localities in suits pending at the same time.

Wherefore, said Cervantes prays that the Court will not entertain jurisdiction herein, but direct the appeal here pending to be dismissed, and that the appellee be relieved from further attention and costs in the premises. And for further answer, it is alleged that the said claim of Cervantes to the land in his petition to said Commission maintained, is valid and ought to be confirmed, and he prays this Court, should it entertain jurisdiction herein, to declare the same to be valid and to confirm it.

And said Cervantes is further instructed that he has a right to protect, and does, therefore hereby solemnly protest that he received the the land which he claimed before said Commission, nearly twenty years ago, by a duly formed concession thereof from the duly constituted authority of the Government of Mexico, and in conformity with the laws thereof, and enjoyed the same, without any question or doubt of his right thereto, until after the passage of the act of Congress herein before mentioned of 3d March, 1851, and that the long delays, enormous expenses, and multipled law suits to which he has been and is now subjected in defence of his rights, thus heretofore obtained and enjoyed, are in violation of his rights as a citizen of the United States, in violation of the treaty of peace between the United States and Mexico and of natural justice, and he prays the honorable Court to grant him such relief in the premises as may be in its power.

By his Attorneys,

(Signed) JONES & STRODE,
Survivors of Jones Tompkins & Strode.

Filed Sept. 1st, 1855.

C. CARR,
Clerk.

(*Order to take further Testimony.*)

IN THE DISTRICT COURT OF THE UNITED STATES
for the Southern District of California.

THE UNITED STATES, Appellant,
vs.
CRUZ CERVANTES.

On motion of the Attorney of the United States, it is ordered by the Court,

That additional testimony may be taken herein by either party.

P. ORD,
U. S. Att'y.

(*Testimony of P. Ord.*)

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF CALIFORNIA.

CRUZ CERVANTES, Appellee,
ads.
THE UNITED STATES, Appellant,

Testimony of Pacificus Ord, a witness on the part of Appellee in the above entitled cause, now on appeal to the Hon. the District Court of the United States for the Southern District of California, to be used on the trial of said cause, taken before me, Charles E. Carr, U. S. Commissioner for the Southern District of California, at Los Angeles, September the 10th, A. D. 1855. Present, P. Ord, U. S. Att'y; Wm. Carey Jones, Att'y for Appellee. P. Ord being by me first duly sworn, says as follows:

Question.—Do you know the locality of the land claimed in this case by Cruz Cervantes, and if yea, state whether you know the locality of the line of 37 degrees north latitude in California, and further whether the said land is north or south of said line?

Answer.—I know the locality of the said land. It is in Monterey county, California, and I know the locality of the line 37° north latitude in California, and the land claimed by Cruz Cervantes, in this case, his south of the said line of 37° north latitude.

(Signed) P. ORD.

Sworn and subscribed before me the 10th day of Sept'r, A. D. 1855.

(Signed) C. E. CARR.
U. S. Com'r.

Filed Sept. 10th, 1855.

C. E. CARR,
Cl'k.

SEPTEMBER 10th, 1855.

Case argued by Counsel for Appellant and Appellee and submitted.

SEPTEMBER 24th, 1855.

Judge Ogier delivered the opinion of the Court, confirming the claim, and the following Decree was ordered to be entered.

(*Decree.*)

CRUZ CERVANTES, Appellee, *ads.* THE UNITED STATES, Appellant, } No. 178. San Joaquin, U. S. District Court for the Southern District of California.

(*Special Term.*)

This cause comes on to be heard on an appeal from the final decision of the commissioners, to ascertain and settle private land claims in the State of California, under an act of Congress, passed on the 3d of March, 1851, on a Transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and additional testimony taken before this Court, and the deposition of witnesses taken before a United States Commissioner, and it appearing to the Court that the said Transcript has been duly filed according to law, and Counsel for both parties having been heard. It is ordered, adjudged and decided that said decision be and the same is hereby affirmed, and it is further ordered, adjudged and decreed, that the claim of the Appellee to the land as described in the record, is a good and valid claim, and the same is hereby confirmed to the extent of two square leagues, provided, said quantity be contained within the limits called for in said Record, and in case there be a less quantity, the claim of Appellee is confirmed to such less quantity.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the South'n Dist. of Cal.

IN THE DISTRICT COURT OF THE UNITED STATES,
for the Southern District of California.

(*Special Term*, 1855.)

LOS ANGELES.

CRUZ CERVANTES, *ads.* THE UNITED STATES, } No. Transcript No. 56, an appeal from U. S. Land Commissioners.

On motion of P. Ord, Attorney for the United States for the Southern District of California, it is ordered by the Court, that an appeal be granted the United States to the Supreme Court of the United States, from the judgment of this Court against the United States in the above entitled cause, rendered on or about the day of A. D. 1855.

P. ORD,
U. S. Dis't Att'y.

Filed Oct. 20th 1855.

C. E. CARR,
Cl'k.

UNITED STATES DISTRICT COURT,
Southern District of California,

CLERK'S OFFICE, LOS ANGELES, *Nov.* 22*d*, 1855.

I, Charles E. Carr, Clerk of the District Court of the United States, for the Southern District of California, do hereby certify the foregoing 17 pages, numbered from 1 to 17, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings, and of the Decision of the said Court, of the Documentary evidence, and of the Testimony of the Witnesses, upon which the same is founded on file in the Office, in Case No. 178, on the Docket of the said Court, wherein Cruz Cervantes, is appellee and the United States are appellant for San Joaquin or Rosa Morada."

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Los [SEAL] Angeles, California, this twenty-second day of November, A. D., 1855, and of the Independence of the United States of America, the Eightieth.

C. E. CARR,
Cl'k.

Transcripts
of
Records.
1856.

Vol. 1.

Supreme Court U. States

Dec. Term 1856.

No. 2.

Index.

Betts	Lewis et ux	29.
Brig Neptune &c	U. States	54.
Barque Laura &c	Osborn	68.
Baker et al	Vachtiet	130.
Brig Ann Elizabeth	Depau de Lemon	731.
Boyle	Morgan	767.
Blanc's Gelpi et al	Conlin	798.
Boston City of	Richardson	1107.
Babbidge et al, claim	Schuchard et al	1215.
Bell	Hearne et al	1319.
Brown	Duchesne	1338.
Blacksmith's adm'r	Fellows &c	1411.
Babcock	Hyman	1445.
Brig Clement	Hunt	1515.
Babin widow of Lly	Fletcher's heirs	1573.
Burke	Gaines et al	1650.
Bryan et al	Forsyth	1680.
Ballance	Capin et al	1807.
Bulkley	Harold	2303.

Byers	Surget	2727.
Beebe et al	Ruffell	2861.
Bacon et al.	Scott	3057.
Bracy's adm'r	Branch Bk of Ala.	3060.
Branch Bk. of Ala	Bracy's adm'r	3060.
Brooks Lessee	Worthington et al	3111.
Ballard et al	Thomas, Collector	3180.
Connell et al	State Mut. F. Ins. Co.	255.
Coiron et al	Lefevre et al	673.
Coulin et al	Blanc's Ex'rs et al	798.
Coffman's M. & C.	Steamer Gipsey	939.
Calderwood et al	Steamer Roanoke	1244.
Cont. Mut. Mar. Ins. Co.	Oliver	1271.
Ditto	Union Mut. Ins. Co.	1489.
City Bk. of Columbus	U. States	2483.
Coggeshall et al	Hartshorn et al	2485.
Cottom's adm'r et al	Cotton et al	2582.
Cotton et al	Cottom's adm'r et al	2582.
Day et al	Rogers & Co. et al	387.
Dupont de Nemours	Brig Ann Elizabeth	731.

Day	Hartshorn et al	1079.
Duchesne	Brown	1338.
Emerson	Slater	1237.
Field	Seabury et al. 1109	1140.
Fisher	Ship Independence	1343.
Fellows et	Blacksmith's &c	1411.
Fletcher's heirs	Babin, widow &c by	1573.
Forsyth	Bryan et al	1080.
Farrelly et al	Woodfolk	262.
Green et al	Moore	275.
Gladding & Pond	Stevens	530.
Greneaux &c	Provost	876.
Garrison A. & D.	Memphis Ins. Co.	1041.
Gaines et al	Burke	1057.
Hunfly	Simons & Co.	791.
Hartshorn et al	Day	1079.
Hill, McLean & Co.	Williams &c	976.
Hearne et al	Bell	1319.
Hammenway &c	Fisher	1343.
Hunt	Brig Clement	1575.

Hartshorne et al	Coggeshall & al	2486.
Howard	Bulkley	2503.
Ditto	Sturgis	2573.
Hudson	Latrop	576.
Jones et al	Ship Richmond	1033.
Jerome	Platt	1203.
Kohler, claimt	U. States	54.
Lewis & ux	Betts	29.
Le Baron	U. States	117.
Long et al	O'Fallon	536.
Latrop	Hudson	576.
Lefevre et al	Coiron et al	673.
Lindsay H. & St. de	Mordecai & al	1014.
Lewis	Ronaldis Ex. & al	2326.
Moore	Greene et al	275.
Mc Cormick	Seymour et al	431.
Mills, claimt de	Vandewater	600.
Meegan	Doyle	701.
Mordecai et al	Schooner Mary Ann	1014.
Mayo, claimt de	Hunt	1875.

Memphis Ins. Co.	Garrison Q. & D.	1641.
McCullough &c	Roots et al	3125.
Mich. Cent. R. R. Co.	Mich. Southn. R. R. Co.	3205.
Mich. Southn. R. R. Co.	Mich. Cent. R. R. Co.	3205.
Neurea Big &c	U. States	54.
Nashville	Baker et al	130.
Nevitt	Bacon et al	3051.
Osborn	Thomas et al	78.
O'Fallon	Long et al	530.
Oliver	Com. Mut. Marine	271.
Provost	Greenaugh &c	870.
Pratt et al, claim	Ord et al	924.
Post et al, claim	Lowe et al	1033.
Platt	Jerome	1203.
Pratt et al, claim	Reed	1558.
Peralta	U. States	2222.
Papin et al	Ballance	107.
Pedrorena's heirs	U. States	2006.
Rogers & Co. et al	Day et al	387.
Richardson	Burton City of	1100.

Reed	St. Boat Sultana	1338.
Ronald's Exr et al	Lewis	2326.
Rufsell	Beebe et al	2801.
Roots et al	McCullough et al	3125.
Sandford	Willok et al	1.
Scott	Sandford	60.
Sandford	Scott	60.
Stewart	U. States	104.
State Mut. F. Ins. Co.	Connell et al	230.
Schooner Ella	Steamer St. Chas.	387.
Steamer St. Charles	Schooner Ella	387.
Seymour et al	McCormick	431.
Stevens	Gladding & Pond	530.
Seabury et al	Field	1109 & 1146.
Ship Jackie Blade	Vandewater	600.
Simons & Co.	Hufty	791.
St. Boat Sultana &c	Ford et al	924.
Steamer Gipsey &c	Coffman J. M. & C.	939.
Shaffer	Scudday	992.
Scudday	Shaffer	992.

Schooner "Mary Eddy	Mordecai et al	1014.
Ship Richmond	Lowe et al	1033.
Schuchard et al	Ship Angelique	1210.
Ship Angelique	Schuchard et al	1210.
Slater	Emerson	1237.
Steamer Roanoke	Calderwood et al	1244.
Ship Independence	Fisher	1343.
St. Boat Sultana &c	Reed	1338.
Sturgis	Harold	2573.
Sturgis	Byers	2727.
Steamer Virginia	West et al	3305.
Thomas et al	Osborn	08.
Todd et al	St. Boat Sultana	924.
Thomas, Collector	Ballard et al	3180.
U. States	Brig Seneca	54.
" "	Stewart	104.
" "	Le Baron	117.
Ure, Claimt &c	Coffman J. M. &c.	939.
Union Mut. Ins. Co.	Cont. Mut. Man. Ins. Co	1489.
U. States	Peralta	2222.

U. States	City Bk. of Columb.	2483.
" "	Pedrosenis heirs	2655.
Vandewater	L. Ship Yankee Blade	650.
Vance et al, claimt	Depositde Lemmon	731.
Willott et al	Sandford	1.
Williams &c	Hill McLean &c.	970.
Wyman	Babcock	1445.
Woodfolk	Farrelly et al	2621.
Worthington et al	Brookes Lessee	3111.
Wyatt et al	Steamer Virginia	3305.